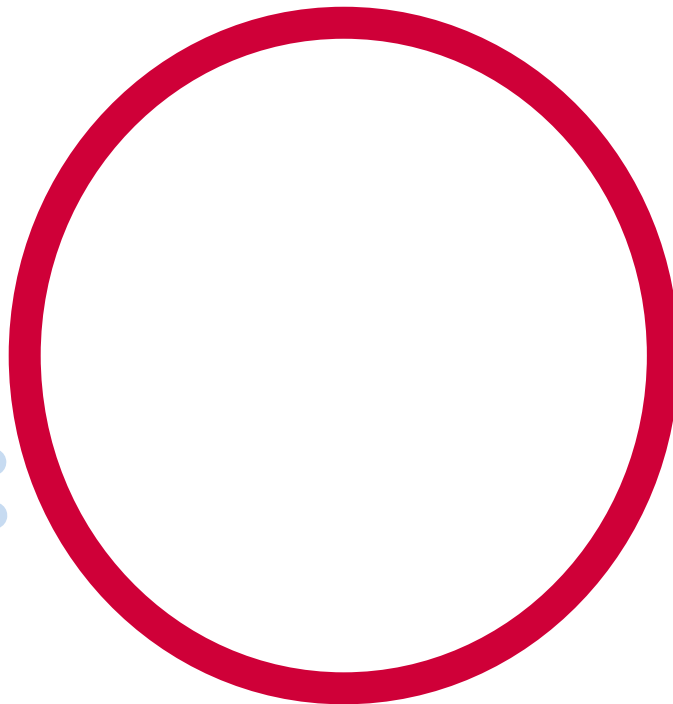
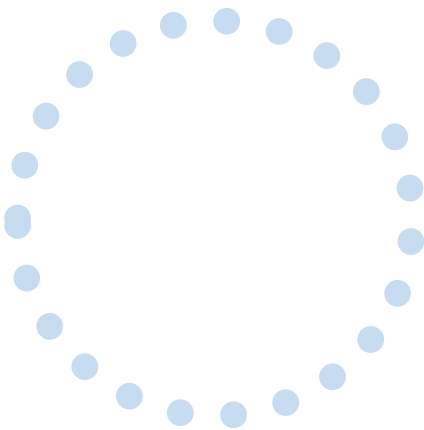
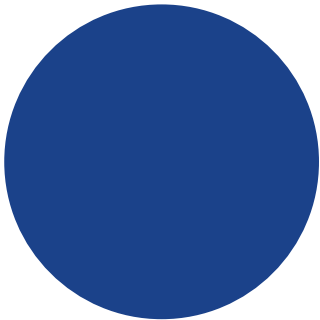


Summary of Stakeholder Feedback

Discussion Paper: Development of a Regulatory Framework for the not for profit requirements of the *Education Act 1990* and review of the Not-For-Profit Guidelines



January 2023

Introduction

In October 2022, the NSW Department of Education issued a [Discussion Paper](#) to seek stakeholder views on:

- the development of a regulatory framework to enhance the oversight of NSW Government financial assistance to non-government schools, and
- the review of the Minister’s [Not-For-Profit Guidelines for Non-Government Schools \(June 2019\)](#) (the “NFP Guidelines”).

The department received a total of 14 submissions from stakeholders including:

- 7 submissions from representative organisations of non-government schools
- 6 submissions from non-government schools
- 1 submission from a relevant government agency.

We thank all stakeholders for the time taken to prepare these submissions.

This document provides a summary of the key themes raised by stakeholders’ submissions under thematic headings. It does not purport to provide an exhaustive account of all issues raised.

Part 1: Development of Regulatory Framework

Regulatory purpose, principles and outcomes

Stakeholder submissions generally indicated support for the intent of the not for profit requirements of the *Education Act 1990* (NSW) (“NFP requirements”), particularly in relation to (as described by stakeholders) the appropriate use of public funds for the education of students, and not for the benefit of individuals.

There was also broad support for the proposed regulatory purpose, principles and outcomes set out in the Discussion Paper as being “fit for purpose” and “appropriate” to underpin the regulatory framework.

Suggestions for clarifying the regulatory purpose, principles and outcomes were also proposed for consideration. These included:

- further clarity on what ‘education’ means in the regulatory outcomes as it relates to the ethos and/or purpose of a school
- further clarity on what ‘operation of the school’ means in the regulatory outcomes, and as it relates to ethos and/or purpose of a school
- further clarity on what ‘operate for profit’ means in the regulatory purpose and regulatory outcomes

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- consideration of the inclusion of an additional regulatory principle on ‘consultation’.

Stakeholders also noted the proposed regulatory purpose, principles and outcomes have benefited from stakeholder engagement in their development.

A number of submissions proposed the regulatory framework should acknowledge the stated ethos and/or purpose of a school in relation to the NFP requirements.

In particular, some stakeholders expressed their view that the term ‘operation of the school’ in relation to the use of a school’s assets and income may be narrowly interpreted and not take into account diverse activities that support a school’s stated ethos and/or purpose.

Suggestions to address these concerns from the perspective of stakeholders included:

- strengthening the reference to a school’s ethos and/or purpose in the proposed regulatory outcomes, and
- providing guidance and examples of activities that support a school’s ethos and/or purpose in the NFP Guidelines and supporting guidance material.

Stakeholder education and engagement

The submissions generally indicated the department’s existing guidance information is useful, but that it can be difficult to find guidance on a desired topic as the information is spread across many documents.

Accordingly, many submissions expressed strong support for the department’s proposal to develop a regulatory index or topic guide to assist in finding guidance on specific issues. For example, shared services and the factors that influence the assessment of reasonable market value on land and property transactions and leases.

Submissions supported the need for more practical and accessible guidance material, including increased use of case studies, “real life” examples, templates, checklists and the development of online training modules.

It was suggested that tailored guidance material be developed for relevant target groups including:

- high level guidance for school governing bodies and principals
- detailed practical guidance to finance, administration and risk officers
- general guidance material for other school staff, and
- guidance on the NFP requirements for independent auditors used by schools.

In relation to the form of guidance material, one submission suggested that the NFP Guidelines and all supporting guidance material should be consolidated in a comprehensive document that would act as the “single source of truth”.

Other submissions suggested the department consider aligning the format of the NFP Guidelines and supporting guidance material with that of other relevant regulatory agencies such as:

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- the NSW Education Standards Authority's Registration and Accreditation of Non-Government Schools Manual, or
 - the Australian Charity and Not-for profit Commission's (ACNC) Governance for Good Guide which includes links to supporting examples and templates.

Submissions also proposed the department establish an advice and enquiry channel to enable schools to seek guidance on specific issues, or establish a system of rulings on contentious issues, similar to Australian Taxation Office (ATO) private rulings.

Submissions welcomed the department's renewed focus on stakeholder consultation and their support for open and ongoing dialogue on the regulatory approach.

Regulatory decision-making

Stakeholder submissions generally supported the development of an outcomes-focused and risk-based regulatory framework. It was said the department's audit and regulatory decision-making processes are appropriate and commended the department on its improved engagement with the non-government school sector over the last few years.

It was also suggested that the department should focus its regulatory activities on identified areas of risk of for-profit activity and should take a proportionate response to suspected for-profit activity.

Stakeholders generally welcomed the proposed development of outcome measures and key performance indicators. Examples of outcome measures and performance indicators proposed in submissions included:

- the number of audits undertaken and number of schools at risk
- the number of schools or systems of schools that have self-reported potential non-compliance, as well as those identified through audits
- the length of investigations and outcomes of investigations
- the number and types of regulatory interventions including declarations of non-compliance or operating for profit.

Feedback was received that it may be beneficial to provide the sector with insight into which areas or topics are of focus in a specific period, and the basis of that focus.

One submission suggested that the regulatory burden on schools could be reduced by transferring the NFP regulatory functions to the NSW Education Standards Authority (NESA).

Reducing unnecessary regulatory burden

Submissions indicated strong support for reducing unnecessary regulatory burden and compliance costs.

The length of time that an investigation is taken to resolve was raised. It was submitted some investigations have taken excessive timeframes without a resolution, imposing a significant administrative burden and high legal costs.

There was broad support for the audits to focus on specific areas of potential for profit activity (“single theme audits”), rather than examine all aspects of a school’s use of its assets and income. It was also noted that by limiting the scope of audits to specific area, audits based on a single theme or topic would increase the overall number of audits that could be undertaken.

Other areas of unnecessary regulatory burden identified by stakeholders included areas that would benefit from clarification (e.g. for auditors) to minimise regulatory burden.

Part 2: Review of the NFP Guidelines

Systems and groups of school

Submissions representing registered systems of schools proposed the NFP Guidelines should clarify how specific the NFP requirements apply to systems of schools.

Key issues raised in this regard include the definition of “related entity”, the use of shared services, and the joint use of school assets.

In this regard, it was also suggested that the NFP Guidelines could also recognise and provide for groups of schools that are not registered as a system.

Issues benefiting from clarification in NFP Guidelines

Stakeholder submissions raised a number of issues they consider would benefit from clarification and improved guidance in the NFP Guidelines. These include:

- **Status of the NFP Guidelines** – clarify the nature and status of the NFP Guidelines, and how they are used in an audit or other regulatory intervention.
- **Operation of the school** – further guidance on the meaning of “for the operation of the school”, particularly in relation to activities that support the stated ethos and mission of a school.
- **Ancillary Services** – provide further guidance on the use of funds to support activities such as Outside of Schools Hours care, Pre-Kindergarten and Early Learning Centres.
- **Reasonable market value** – clarify the concept of “at no more than reasonable market value” and provide examples.
- **Materiality** – include guidance on materiality in relation to school purchases to reduce the administrative burden, including between related entities.
- **Ethos and/or purpose** – a set of principles regarding payments and use of assets for activities that support a school’s ethos and/or purpose and a range of examples.
- **Property transactions** – guidance on the factors influencing the consideration of payments “at no more than reasonable market value” for land and property transactions and leases.
- **Related entities** – a clear definition of “related entity” in the context of a non-government schools.
- **Shared services** – further guidance on shared services within a system of schools and between schools and organisations that are part of related organisations.

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- **Shared or joint use of assets** – further guidance on the use of school facilities outside of school hours, including access to the wider community.
 - **Marketing and fundraising** – further guidance on the use of funds for marketing and fundraising for the school, including assistance and support for alumni organisations and commercial consulting services to overseas schools, online learning programs and support services to other schools.

Next steps

The department will consider all stakeholder submissions in the development of the Regulatory Framework and review of the NFP Guidelines. This consideration will include reflection on the suggestions in the context of the legislative framework and legal advice where appropriate.

To provide stakeholders with a further opportunity to provide input, the department will issue exposure drafts of the Regulatory Framework and the revised NFP Guidelines for public consultation in early 2023.