

Providing feedback to the NSW Department of Education on the Draft NFP Guidelines and Regulatory Framework

The following advice is provided to assist schools with their feedback to the NSW Department of Education's exposure drafts of these draft documents, namely:

- *'Not-for-Profit Guidelines for Non-Government Schools'* and
- *'Regulatory Framework for the Oversight of Financial Assistance Provided to NSW Non-Government Schools'*

This advice highlights key concepts and common transactions that are most likely to concern schools in their day to day operations.

Schools may wish to address some or all of these matters in their own submission/feedback to the Department, about whether the revised Guidelines provide the necessary information to understand s83C compliance requirements and whether the proposed Regulatory Framework document contains helpful information.

AISNSW is of the view that until the s83C review is completed, releasing new guidelines would be counterproductive. However, we believe it is still important to highlight concerns regarding the content of these exposure drafts.

WHAT SHOULD YOUR FEEDBACK INCLUDE?

The aim of providing feedback is to inform the Department about the things you feel are relevant to the changes being proposed and ensure your views are considered.

It does not need to be long, formal or framed in a particular format. It can be an email, letter or a more substantial document with tables, references, appendices and other supporting documents.

You only need to address those issues that are relevant to you. You may wish to use headings to structure to your feedback. You may also suggest possible solutions.

DRAFT NFP GUIDELINES

The purpose of Section 83C is to ensure that non-government schools receiving financial assistance from the NSW Government are not operating for profit.

To help schools understand how the legislation works in practice, the NSW Government issued the most recent *Not-for-Profit Guidelines for Non-Government Schools* (NFP Guidelines) in 2019. The purpose of the NFP Guidelines is to assist schools in understanding how Section 83C may be applied in a range of circumstances through general guidance and principles.

As part of this current review, the NFP Guidelines has been revised and a draft has been issued for consultation.

KEY CONCEPTS

The draft NFP Guidelines list and define four Key Concepts that appear repeatedly in the document:

1. The operation of the school
2. Reasonable market value
3. In any other way unreasonable in the circumstance
4. Ethos, purpose and mission

Schools may wish to consider each of these concepts and ask if they have been clearly defined or are ambiguous and open to interpretation or misunderstanding. They may also consider whether the list of suggested “Relevant records” is reasonable for schools to maintain.

COMMON TRANSACTIONS AND AREAS OF OPERATION

The draft Guidelines also list and outline 24 common operational transactions including property acquisition, leasing, shared or joint use of assets, salaries, travel and one-off payments.

AINSW encourages each school to examine the exposure drafts and focus on those issues most likely to affect their operation.

DRAFT REGULATORY FRAMEWORK

The NSW Department of Education is developing an outcomes and risk-based regulatory framework for the not for profit requirements of the Act.

The regulatory framework articulates the core foundations of why and how the Department regulates the not for profit requirements of the Act. This includes their regulatory approach and principles.

The draft Regulatory Framework has been developed and a draft has been issued for consultation.