NESA School Governance Compliance Requirements

supporting the NSW Education Act 1990

NSW Education Standards Authority (NESA)

*Registration **Systems** and Member Non-government Schools (NSW) Manual*
(Refer to School Governance Section 5.9 Management and operation of the school)

Registration Systems and Member Non-government Schools | NSW Education Standards

*Registered and Accredited **Individual** Non-government Schools (NSW) Manual*
(Refer to School Governance Section 3.9 Management and operation of the school)

Registered and Accredited Individual Non-government Schools | NSW Education Standards

Official Notice: 2017 Amendments to Non-government School Registration Manuals | NSW Education Standards
Certification of financial viability :: RANGS

State

NSW Education Act 1990 (last modified 1 January 2017)	EDUCATION ACT 1990
NSW Education Act 1990 Section 47	EDUCATION ACT 1990 - SECT 47 Registration requirements for non-government schools
NSW Education Act 1990 Section 83C	EDUCATION ACT 1990 - SECT 83C Financial assistance not to be provided to schools that operate for profit
NSW Education Act 1990 Section 83L	EDUCATION ACT 1990 - SECT 83L Not-for-profit guidelines

NSW Not-for-profit Guidelines for non-government schools — Not-for-Profit Guidelines

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NESA

NSW Educational Standards Authority's School Governance Compliance Requirements

The January 2017 changes to NESA (formerly BOSTES) registration manuals include two governance measures: Responsible Persons must be 'a fit and proper person' rather than of 'good character' and a registered non-government school must be 'financially viable'. In addition to the governance measures NESA advises that the quality of teaching and learning will be assessed at the time of registration (refer section 7.3 system schools and section 5.3 individual schools).

NESA Manual/Act	Governance Requirement	Compliance Element	Related
5.9 School Systems 3.9 Independent Schools /S47	**NESA Management and operation of the school** 10 NESA governance requirements	1. Register all Responsible Persons who must **be 'a fit and proper person'** 2. Provide Proper Governance through delegation, supervision and code of conduct 3. Record and adhere to policies and procedures 4. Register and avoid Conflicts of Interest 5. Operate on a Not-for-Profit basis and register Related Party Transactions 6. Record and provide ongoing professional learning and governance training to Responsible Persons 7. Record and provide induction and governance training to all new Responsible Persons 8. Register annual independent audits of financial statements to Australian Accounting/Auditing Standards 9. Notify BOSTES of change of character of Responsible Persons, if school moved or sold, of alleged breaches of law or bankruptcy. 10. A registered non-government school must **be financially viable.**	
5.9.1 and 3.9.1	Who is a Responsible Person?	A **Responsible Person** for a school is: • The proprietor of the school, and if a corporation then each director or person concerned in the management of the school • Each member of the governing body/board of the school	

	What is meant by 'a fit and proper person' or governing body?	• The principal of the school Each Responsible Person and the governing body of the school must **be 'a fit and proper person'**and should avoid the following**:** • having debts to any State/Territory government or the Commonwealth • being bankrupt, insolvent, subject to court orders or external administration; or a record of unsatisfactory financial management • being convicted, or charged with, any offence in relation to children, dishonesty or violence • engaging in a deliberate pattern of conduct of immoral or unethical behaviour.	
5.9.2 and 3.9.2 / S 56 and S 59	5 Year time frame of registration	During the past five years, the actions of a Responsible Person or a proposed Responsible Person cannot contribute towards the refusal or cancellation of a school registration	
	Not-for-Profit status **Note**: NESA manuals do not specifically address the Not-For-Profit status of some non-government schools. NESA manuals are applicable to both not-for-profit and for profit non-government schools. The NSW Education Act 83C and the ACNC Act Division 45 address the not-for-profit requirement for registered school charities.	For the vast majority of **schools not operating for profit**, the requirements of the Australian Charities and Not-for-profits Commission (ACNC) apply. ACNC sets out five (5) governance standards for the operation of all Australian registered charities including Catholic schools and systems of schools: • Registered charities must be not-for-profit and work towards their charitable purpose • Registered charities must be accountable to their members and allow concerns to be raised • Registered charities must not commit a serious offence (such as fraud) under any Australian law • Responsible Persons must be suitable and not disqualified under Corporations Law 2001 or by ACNC • Duties of Responsible Persons are understood and carried out according to ACNC Standards.	See ACNC Act 2012 and NSW Ed Act 1990 S83(c) for Not-for-profit status and definitions
5.9.3.1 and 3.9.3.1	A registered non-government school must have **policies and procedures** in place for the **proper governance** of the school	School **policies and procedures** include: • a school charter/constitution setting out the governance structure and roles and responsibilities of each Responsible Person	

		• a delegations schedule identifying the respective authority of each role in the governance structure; and procedures for withdrawal of a delegation of authority from a Responsible Person • a document of the supervisory and reporting arrangements for each Responsible Person including the school executive and governing body/board • records of governance decisions including minutes of formal meetings of the governing body; to be kept 7 years minimum • a document of the school's legal compliance framework referencing relevant legislation. **This document is an example.** • a document of the school's risk management framework and procedures for reviewing and mitigating risks to non-compliance • a register of the school's Responsible Persons; recording within 28 days of when a person commenced and ceased a role; register to be kept 7 years minimum	
5.9.3.2 and 3.9.3.2	Each Responsible Person must **avoid Conflicts of Interest** with the school, their role and decisions of the governing body	School policies and procedures for dealing with **Conflicts of Interest**: • a policy statement defining Conflict of Interest in the school context and measures to avoid and mitigate • a procedure/register of annual declaration by each Responsible Person of actual, perceived or potential Conflicts of Interest • a procedure and minutes of declarations of Conflicts of Interest in relation to specific agenda items in formal meetings • Responsible Persons must act to mitigate a Conflict of Interest e.g. by absenting oneself from associated decision-making or advising • retaining records of Conflicts of Interest registers and minutes for 7 years minimum	
5.9.3.3 and 3.9.3.3 / S 83C	**Related Party Transactions** by the school are examples of Conflicts of Interest and must be managed responsibly and transparently	A Related Party Transaction (RPT) is where a Responsible Person, acting on behalf of the non-government school, provides a **financial or tangible benefit to a Related Party** such as him/herself, spouse or relatives, friends, close associates or related organisations. The RPT may include a **cash or in-kind payment** in connection to the supply of property, goods or services to or by the school. A school must have **policies and procedures** for RPT:	See NSW Education Act 83C and NSW NFP Guidelines for more detail on Related Parties

		○ keep a **register of all RPT** where each Responsible Person discloses each RPT and records the degree of materiality. ○ keep RPT register and records for 7 years minimum. ○ arrange an **annual external audit** of the RPT register. ○ notify NESA when a contract with an external auditor of RPT is terminated before the expiry date and the reasons for early termination.	
5.9.3.4 and 3.9.3.4 / S47	**Professional Learning** for Responsible Persons	Proper Governance requires the school to ensure that all Responsible Persons have relevant qualifications, skills and experience for governing the school. A school must have **policies and procedures** for professional learning: ○ keep a **register of professional learning** for all Responsible Persons including pre-existing qualifications and professional experience. ○ Keep professional learning register for 7 years minimum. ○ Ensure each Responsible Person completes the 12 hours of **mandatory governance training** in each 3 year period (or 4 hours per year). ○ Governance professional learning must include a **school context** and be delivered by a NESA approved training provider. ○ Ongoing professional learning **must be relevan**t to the development of the Responsible Person in relation to their role e.g. education, leadership, finance, compliance, risk management.	
5.9.3.5 and 3.9.3.5	**Induction Process** for new Responsible Persons Includes mandatory governance training	Proper Governance requires that all new Responsible Persons taking up a responsible position in the school should be fully informed of the	

	Responsible Persons in Acting Positions should undertake 4 hours of governance training when the Acting Position is longer than 3 months	situation at the school and receive **prompt school-based induction** including mandatory governance training.
		
		A school must have **policies and procedures** for induction:
		
		• keep a **register of school-based induction** for all Responsible Persons including mandatory governance training **within 3 months** of taking up the responsible position
		• Keep induction register for 7 years minimum including:
		  ○ Qualifications and experience relevant to the role
		  ○ Details of completion of governance training
		  ○ Acknowledgement of receipt of documents.
		• Ensure each new Responsible Person **receives copies** of documents listed in 5.9.3.1 that is:
		○ School charter, governance structure, roles of Responsible Persons, delegations schedule, supervisory arrangements, reporting requirements, code of conduct of Responsible Persons, legal compliance framework, risk management framework,
		○ Most recent audited financial statements of the school
		○ Recent minutes of meetings/decisions of Responsible Persons	

5.9.3.6 and 3.9.3.6	**External independent attestation audit of annual financial statements** NSWDE requires State Per Capita funds to be audited by an ASIC registered accountant/auditor	Proper governance requires the school's annual financial accounts to be **audited and certified** by an external independent auditor. The school proprietor must provide evidence that the annual audit and certificate: • Are completed by a qualified accountant recognised by CPA Australia, Institute of Chartered Accountants or Institute of Public Accountants • Comply with Commonwealth and NSW Government requirements (Australian Accounting/Auditing Standards) • **Not** completed by a person/body with whom the school has another business relationship in addition to audit services	Corporations Law 2001

		• **Not** completed by a person/body with whom any Responsible Person of the school has a Conflict of Interest • Keep annual audit register and records for 7 years minimum. • Notify NESA when a contract with an external auditor is terminated before the expiry date and the reasons for early termination.	
5.9.4 and 3.9.4/S47	**Financial Viability** New requirement in 2017	A registered non-government **school must be financially viable** The proprietor of a systemic non-government school is required to maintain evidence to demonstrate the current financial viability of the school at the time of making an application for initial or renewed registration. The evidence of financial viability is prescribed by NESA and is to be in the form of a certification or warrant by the registration system or another body or person approved by NESA for that purpose. The proprietor of a systemic non-government school is required to maintain evidence relating to the member schools of the registration system of either a: • *Certification of Financial Viability* from the registration system authority or another NESA approved body or person assessed against the NESA *Financial Viability Framework*, or a • *Financial Viability Warrant* from the registration system authority or another NESA approved body or person providing assurance of financial viability. The NESA *Certification of Financial Viability, Financial Viability Framework* and the *Financial Viability Warrant* are published on the NESA registration website Certification of financial viability :: RANGS	
5.9.5 and 3.9.5 /S63A	NESA must be notified of certain matters	NESA, and at least one other Responsible Person of the school, must be notified as soon as practicable when a Responsible Person of the school: • Is **convicted** of an offence punishable by imprisonment of 12 months or more • Becomes **bankrupt** or insolvent or takes illicit benefit	

		• If the person is a corporation and is subject to winding up or a controller or administrator has been appointed
		• Becomes **mentally incapacitated**
		  ○ As a patient at an institution for that incapacity
		  ○ As a protected person under the NSW Trustee and Guardian Act 2009
		
		The school proprietor and/or the principal must notify NESA when the **school is moved or sold.**
		• 3 months prior relocation
		• 7 days prior completion of sale
		
		The Approved Authority for a system of non-government schools must provide NESA with information concerning the registration of each school, **in a form, and at the times, approved by NESA** for that purpose.	

State

NSW Education Act 1990 (amended) Section 47, Section 83C and the NSW Not-for-profit Guidelines (Sept 2015)

NSW Education Act	Governance Requirement	Compliance Element	Related
Section 47	**Part 7, S47 Registration requirements for non-government schools** S47 Minister sets out the **conditions for registration** of schools in order to receive recurrent funding	To be a registered non-government school in NSW: (a) school must be a corporation or another **legal entity** approved by the Minister (b) each **Responsible Person** for the school must be of good character (b1) policies and procedures (p&p) for **proper governance** of the school are in place (c) any refusal/cancellation of registration in the **past 5 years** is not attributable to the actions/intentions of the school's Responsible Persons	

		(d) **teaching staff** for the school have the necessary experience and qualifications (having regard to accreditation under the *Teacher Accreditation Act 2004)* (e) **educational facilities** are adequate for the courses of study provided at the school (f) **school premises** and buildings are satisfactory (g) a safe and supportive environment is provided for students: (i) school p&p provide for the **welfare of students**, and (ii) persons who are employed at the school are employed in accordance with Part 2 of the *Child Protection (Working with Children) Act 2012*, and (iii) school p&p ensure compliance with Part 3A of the *Ombudsman Act 1974* and the ***Child Protection*** *(Working with Children) Act 2012*, and (iv) student enrolment and **attendance** registers are maintained. (h) school policies relating to **discipline of student**s attending the school are based on principles of procedural fairness, and do not permit corporal punishment of students (i) if the school provides **boarding facilities**, whether itself or by contractual arrangement-the school p&p ensure the safety and welfare of boarders (j) compliance with the requirements set out in Part 3 relating to providing the **minimum curriculum** for each level of schooling, be it Primary Foundation to Year 6, Secondary Years 7-10 or for candidates of the Higher school Certificate, Years 11-12. (k) school p&p are appropriate to ensure the personal and social development of students undertaking **distance education**, for all or part of their courses of study (l) school p&p ensure its participation in **annual reporting** (of a kind determined by the Minister): (i) to **publicly disclose** the educational and financial performance measures and policies of the school, and (ii) to **provide data** to the Minister that is relevant to the	

		Minister's annual report to Parliament on the effectiveness of schooling in the State.	
Section 83C / NFP	**Financial assistance not to be provided to schools that operate for profit**	(1) The Minister must not provide financial assistance to or for the benefit of a school that **operates for profit**. (2) A school operates for profit if the Minister is satisfied that: (a) any part of its proprietor's school assets or school income is used for any purpose other than for the operation of the school, or (b) any payment is made by the school to a **related entity** or other person or body: (i) for property, goods or services **at more than reasonable market value**, or (ii) for property, goods or services that are **not required for the operation of the schoo**l, or (iii) for property, goods or services that is **in any other way unreasonable** in the circumstances having regard to the fact that financial assistance is provided to or for the benefit of the school by the Minister, or (c) any payment is made by the school to a person in connection with the person's activities as a **member of the governing body** of the school unless it is in reimbursement for a payment made by the person in connection with the operation of the school. (3) The regulations may specify whether or not a school operates for profit because of any **particular use of assets or income**, any particular payment in relation to the school or any other matter. (4) The Minister is **not obliged to terminate** the provision of financial assistance if, following an investigation under this Division, the Minister is satisfied that: (a) termination of financial assistance is not justified because of the minor nature of the relevant conduct, or (b) more appropriate action can be taken under section 83E.	