



New South Wales

# Education Amendment (Not-for-profit Non-Government School Funding) Bill 2014

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are to make further provision for preventing financial assistance being provided to or for the benefit of non-government schools that operate for profit and to provide for the recovery of any amounts paid to a non-government school that operates for profit. For that purpose, the Bill:

- (a) restates the prohibition on financial assistance being provided by the Minister for Education (the *Minister*) to or for the benefit of non-government schools that operate for profit, and
- (b) sets out when a non-government school operates for profit, and
- (c) provides for the appointment, composition and functions of a Non-Government Schools Not-for-profit Advisory Committee (the *Advisory Committee*), and
- (d) empowers the Minister to conduct an investigation of, or to give directions to, non-government schools and proprietors of those schools in connection with financial assistance, and
- (e) authorises the Minister to suspend, reduce or impose conditions on financial assistance to a non-government school that is a *non-compliant school* because it has not assisted in any such investigation or complied with any such direction or has operated for profit, and
- (f) permits the Minister, on the recommendation of the Advisory Committee, to make a conclusive declaration that a non-government school is operating or has operated for profit or is a non-compliant school, and
- (g) provides for an administrative review by the NSW Civil and Administrative Tribunal (*NCAT*) of any such recommendation of the Advisory Committee, and

- (h) enables the Minister to recover financial assistance provided to a non-government school that operates for profit or to a non-compliant school, and
- (i) authorises the Minister to publish guidelines in relation to the above matters.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## Schedule 1 Amendment of Education Act 1990 No 8

**Schedule 1 [14]** inserts a proposed Division 3 (Financial assistance to non-government schools) into Part 7 of the Act and **Schedule 1 [3]–[13], [15] and [16]** make consequential amendments (including the re-arrangement of provisions of the Act in connection with the transfer of provisions relating to financial assistance to non-government school children being transferred to the proposed Division). The proposed Division contains the following proposed sections:

**Proposed section 83A** sets out a number of definitions of terms used in the proposed Division (including that *school* means a non-government school).

**Proposed section 83B** is current section 21 (which authorises financial and other assistance to be provided in respect of non-government school children and which is renumbered and transferred to the proposed Division).

**Proposed section 83C** restates the prohibition (currently contained in section 21A) on the Minister providing financial assistance to or for the benefit of a school that operates for profit. The proposed section provides that a school operates for profit if any part of the assets of the proprietor of the school (in so far as they relate to the school) or income (in so far as it arises from the operation of the school) is used for a purpose other than for the operation of the school. The proposed section also sets out some circumstances in which certain payments are taken not to be for the operation of a school (including more stringent requirements in relation to payments to related entities for the provision of goods and services). The proposed section also removes the current provision that allows payments to be made to the members of the governing body of the school.

**Proposed section 83D** enables the Minister, on the recommendation of the Advisory Committee, to declare that a non-government school operates, or has operated, for profit (*a for profit declaration*). The making of a for profit declaration in respect of a school is conclusive evidence that the school is or has operated for profit. The declaration may be revoked and is required to be revoked if the Advisory Committee advises that the school has ceased to operate for profit.

**Proposed section 83E** authorises the Minister to suspend, reduce or impose conditions on financial assistance to a non-compliant school. A non-government school is a non-compliant school if the Minister is satisfied that the school or the proprietor of the school has failed to provide reasonable assistance in relation to an investigation conducted by the Minister under the proposed Division or has failed to comply with a direction of the Minister under the proposed Division. A school that operates for profit, or has operated for profit is also a non-compliant school if the Minister is satisfied that termination of financial assistance to the school is not justified because of the minor nature of the relevant conduct or that it is more appropriate to suspend, reduce or impose conditions on financial assistance to the school.

**Proposed section 83F** enables the Minister, on the recommendation of the Advisory Committee, to declare that a non-government school is a non-compliant school (*a non-compliance declaration*). The making of a non-compliance declaration in respect of a school is conclusive evidence that the Minister has grounds to suspend, reduce or impose conditions on financial assistance to the school. The declaration may be revoked and is required to be revoked if the Advisory Committee advises that the school is no longer a non-compliant school.

**Proposed section 83G** requires the Minister to give notice to a school and the proprietor of the school before making a for profit declaration or a non-compliance declaration in respect of the school. The notice must set out the relevant recommendation of the Advisory Committee. The Minister cannot make the declaration until the school or the proprietor of the school has had an opportunity to seek a review of the Advisory Committee's recommendation by NCAT.

**Proposed section 83H** empowers the Minister to carry out an investigation into a non-government school or the proprietor of the school if the Minister suspects that the school may be operating for profit or may be a non-compliant school. The Minister may defer financial assistance to the school during an investigation. The Minister is to consult with the Advisory Committee before conducting any investigation. The Advisory Committee is to have an overarching advisory role in relation to investigations. Responsibility for the day to day management of an investigation is intended to be delegated by the Minister to the Office of Education in the Department of Education and Communities.

**Proposed section 83I** permits the Minister to give directions to a non-government school or the proprietor of a school that require the school or proprietor to undergo a financial audit, to provide information or to cease specified conduct that is in breach of the not-for-profit obligations of the proposed Division. The regulations may prescribe additional directions that may be given.

**Proposed section 83J** provides for the recovery of financial assistance by the Minister from a school that is or was operating for profit or a non-compliant school.

**Proposed section 83K** provides for the appointment, composition and functions of the Advisory Committee. The members of the Advisory Committee are to be appointed by the Minister and are to be made up of an independent chair, one representative each for the Association of Independent Schools, the Catholic Education Commission, the Board of Studies, Teaching and Educational Standards and the Department of Education and Communities and any other persons who, in the opinion of the Minister, will be of assistance to the Advisory Committee in the exercise of its functions. The functions of the Advisory Committee are to advise the Minister on compliance with the proposed Division and to make recommendations on whether the Minister should make a for profit declaration or a non-compliance declaration.

**Proposed section 83L** authorises the Minister, with the advice of the Advisory Committee, to publish guidelines relating to the exercise of functions under the proposed Division, including to assist schools and proprietors of schools to comply with the proposed Division.

**Schedule 1 [1] and [2]** update references in the Act as a consequence of the Director-General of the Department of Education and Communities being renamed the Secretary of the Department.

**Schedule 1 [17]–[19]** give a right to a non-government school and its proprietor to seek administrative review by NCAT of a recommendation of the Advisory Committee that the Minister make a for profit declaration or a non-compliance declaration.

**Schedule 1 [20]** permits certificates signed by the Minister and stating certain matters to be used as prima facie evidence of those matters in proceedings under the Act.

**Schedule 1 [21]** includes a number of savings, transitional and other provisions consequential on the enactment of the proposed Act. Those provisions permit investigations to be carried out and the directions to be given under proposed Division 3 of Part 7 to determine whether a non-government school operated for profit before the commencement of that Division. The provisions also permit payments made before that commencement to be recovered. The provisions also give schools a transition period of 3 months to comply with revised arrangements on what constitutes operating a school for profit. The provisions also provide that a for profit declaration is taken to have been made in respect of a particular non-government school (the Malek Fahd Islamic School at Greenacre) being a declaration that the school operated for profit from 1 January 2010 until 31 July 2012.

**Schedule 2      Amendment of Government Information (Public  
Access) Regulation 2009**

**Schedule 2** amends the *Government Information (Public Access) Regulation 2009* to provide that the Advisory Committee is taken to be part of the Department of Education and Communities for the purposes of the *Government Information (Public Access) Act 2009*.