



New South Wales

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

under the

Education Act 1990

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Education Act 1990*.

ADRIAN PICCOLI, MP
Minister for Education

Explanatory note

The objects of this Regulation are:

- (a) to provide that a reasonable payment made to a student of a non-government school in connection with a prize, scholarship or other activity as a student of the school does not cause the school to operate for profit and to therefore be ineligible for financial assistance from the Minister for Education, and
- (b) to provide for the constitution and procedure of the Non-Government Schools Not-for-profit Advisory Committee, and
- (c) to separate the provisions of the *Education Regulation 2012* into Parts, and
- (d) to update a reference as a consequence of the Director-General of the Department of Education and Communities being renamed Secretary.

This Regulation is made under the *Education Act 1990*, including sections 83B (4), 83C (3), 83K (3) and 130 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Education Amendment (Not-for-profit Non-Government School Funding) Regulation 2014*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Education Regulation 2012

[1] **Part 1**

Insert before clause 1:

Part 1 Preliminary

[2] **Part 2**

Insert after clause 3:

Part 2 Compulsory school-age

[3] **Clause 4 Completion of Year 10**

Omit “Director-General” from paragraph (a) of the definition of *relevant authority* in clause 4 (5).

Insert instead “Secretary”.

[4] **Part 3**

Insert after clause 7:

Part 3 Non-government Schools

[5] **Clauses 9A and 9B and Part 4**

Insert after clause 9:

9A School does not operate for profit because of certain payments to students

For the purposes of section 83C (3) of the Act, a non-government school is not taken to operate for profit because of a reasonable payment made to a student of the school in connection with a prize, scholarship or other activity as a student of the school.

9B Non-Government Schools Not-for-profit Advisory Committee

For the purposes of section 83K (3) of the Act, Schedule 1 contains provisions relating to the constitution and procedure of the Non-Government Schools Not-for-profit Advisory Committee.

Part 4 Miscellaneous

[6] **Schedule 1**

Insert after clause 13:

Schedule 1 Constitution and procedure of advisory committee

(Clause 9B)

Part 1 General

1 Definitions

In this Schedule:

Chairperson means the Chairperson of the committee.

committee means the Non-Government Schools Not-for-profit Advisory Committee.

member means any member of the committee.

Part 2 Constitution

2 Terms of office of members

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Part-time appointments

Members hold office as part-time members.

4 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

5 Deputies

- (1) A member may, from time to time, appoint a person to be the deputy of the member, and may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.
- (5) This clause does not operate to confer on the deputy of a member who is the Chairperson the member's functions as Chairperson.

6 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or

- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause, or
- (e) is absent from 3 consecutive meetings of the committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member from office at any time.

7 Filling of vacancy in office of member

If the office of a member becomes vacant, a person is, subject to the Act and this Regulation, to be appointed to fill the vacancy.

8 Chairperson

- (1) The Chairperson vacates office as Chairperson if he or she:
 - (a) is removed from that office by the Minister under this clause, or
 - (b) resigns that office by instrument in writing addressed to the Minister, or
 - (c) ceases to be a member of the committee.
- (2) The Minister may at any time remove the Chairperson from office as Chairperson.

9 Disclosure of pecuniary interests

- (1) If:
 - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the committee, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the committee.
- (2) A disclosure by a member at a meeting of the committee that the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the committee in a book kept for the purpose and that book must be open at all

reasonable hours to inspection by any person on payment of the fee determined by the committee.

- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the committee otherwise determines:
 - (a) be present during any deliberation of the committee with respect to the matter, or
 - (b) take part in any decision of the committee with respect to the matter.
- (5) For the purposes of the making of a determination by the committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the committee for the purpose of making the determination, or
 - (b) take part in the making by the committee of the determination.
- (6) A contravention of this clause does not invalidate any decision of the committee.
- (7) This clause applies to a committee of the committee (a *subcommittee*) and the members of that subcommittee in the same way as it applies to the committee and its members.

10 Effect of certain other Acts

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a member.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Regulation as a member.

11 Personal liability

A matter or thing done or omitted to be done by the committee, a member of the committee or a person acting under the direction of the committee does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing the Act or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

Part 3 Procedure

12 General procedure

The procedure for the calling of meetings of the committee and for the conduct of business at those meetings is, subject to the Act and this Regulation, to be as determined by the committee.

13 Quorum

The quorum for a meeting of the committee is a majority of its members for the time being.

14 Presiding member

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the committee who are present at a meeting of the committee) is to preside at a meeting of the committee.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

15 Voting

A decision supported by a majority of the votes cast at a meeting of the committee at which a quorum is present is the decision of the committee.

16 Transaction of business outside meetings or by telephone etc

- (1) The committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the committee made at a meeting of the committee.
- (2) The committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the committee.
- (4) A resolution approved under subclause (1) is, subject to this Regulation, to be recorded in the minutes of the meetings of the committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by electronic means.

17 First meeting

The Minister may call the first meeting of the committee in such manner as the Minister thinks fit.