



New South Wales

# Education Amendment (Non-Government School Assets and Income) Regulation 2024

under the

Education Act 1990

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

PRUE CAR, MP  
Minister for Education and Early Learning

## Explanatory note

The object of this regulation is to amend the *Education Regulation 2017* to clarify when a non-government school providing certain education and care services operates for profit.

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### **1 Name of regulation**

This regulation is the *Education Amendment (Non-Government School Assets and Income) Regulation 2024*.

### **2 Commencement**

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

## Schedule 1 Amendment of Education Regulation 2017

### Clause 10B

Insert after clause 10A—

#### 10B School providing certain education and care services does not operate for profit

- (1) For the Act, section 83C(3), a non-government school does not operate for profit if the proprietor's assets or income, as far as they relate to the school, are used by the proprietor to provide a recognised education and care program for—
  - (a) children who attend the school, and
  - (b) children who meet criteria specified in guidelines approved by the Minister under the Act, section 83L.
- (2) Despite subclause (1), a non-government school operates for profit if—
  - (a) financial assistance provided by the Minister under the Act, Part 7, Division 3 is used for a recognised education and care program, or
  - (b) a payment is made by the school to a related entity or other person or body for property, goods or services—
    - (i) at more than reasonable market value, or
    - (ii) that are not required for the operation of the school or a recognised education and care program, or
    - (iii) in circumstances the Minister considers to be unreasonable, having regard to the fact that financial assistance is provided to or for the benefit of the school by the Minister, or
  - (c) income received by the proprietor arising from the operation of a recognised education and care program is used for a purpose other than—
    - (i) the operation of a recognised education and care program, or
    - (ii) the operation of the school.

- (3) In this clause—

**long day care** means a service providing care, including a preschool program, for children less than 6 years of age.

**out of school hours care** means care, play and learning for school children delivered before and after school, during school holidays and on pupil free days.

**preschool program** has the same meaning as in the *Children (Education and Care Services) National Law (NSW)*.

**recognised education and care program** includes the following—

- (a) a preschool program,
- (b) long day care,
- (c) out of school hours care.