BOSTES School Governance Compliance Requirements supporting the NSW Education Act 1990 (amended)

BOSTES

Registration Systems and Member Non-government Schools (NSW) Manual (Section 5)

Registered and Accredited Individual Non-government Schools (NSW) Manual (Section 3)

State


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

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## BOSTES

### Board of Studies, Teaching & Educational Standards NSW School Governance Compliance Requirements supporting NSW Education Act 1990

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<td>5.9 School Systems 3.9 Independent Schools /S47</td>
<td>BOSTES Management and operation of the school</td>
<td>1. Register all Responsible Persons who must be of good character 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, or alleged breaches of law or bankruptcy.</td>
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<tr>
<td>5.9.1 and 3.9.1</td>
<td>Who is a Responsible Person?</td>
<td>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  - The principal of the school  Each Responsible Person must be of good character:  - Has never been convicted of an offence  - Has never been bankrupt or wound up  - Has never engaged in deliberate conduct of immoral, unethical or questionable behaviour</td>
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<td></td>
<td>What is meant by ‘of good character’?</td>
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<td>5.9.2 and 3.9.2 / S 56 and S 59</td>
<td>5 Year time frame of registration</td>
<td>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</td>
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| 5.9.3 and 3.9.3 | Not-for-Profit status | 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 |
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<td>5.9.3.2 and 3.9.3.2</td>
<td>Each Responsible Person must avoid Conflicts of Interest with the school, their role and decisions of the governing body</td>
<td>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</td>
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<td>5.9.3.3 and 3.9.3.3 / S 83C</td>
<td>Related Party Transactions by the school are examples of Conflicts of Interest and must be managed responsibly and transparently</td>
<td>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: - 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 BOSTES when a contract with an external auditor of RPT is terminated before the expiry date and the reasons for early termination. See NSW Education Act 83C and NSW NFP Guidelines for more detail on Related Parties</td>
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<td>5.9.3.4 and 3.9.3.4 / S47</td>
<td>Professional Learning for Responsible Persons</td>
<td>Proper Governance requires the school to ensure that all Responsible Persons have relevant qualifications, skills and experience for governing the school.</td>
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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 BOSTES approved training provider.
- Ongoing professional learning must be relevant to the development of the Responsible Person in relation to their role e.g. education, leadership, finance, compliance, risk management.

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<th>5.9.3.5 and 3.9.3.5</th>
<th><strong>Induction Process</strong> for new Responsible Persons Includes mandatory governance training</th>
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<td>Responsible Persons in Acting Positions should undertake 4 hours of governance training when the Acting Position is longer than 3 months</td>
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Proper Governance requires that all new Responsible Persons taking up a responsible position in the school should be fully informed of the 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:
| 5.9.3.6 and 3.9.3.6 | **External independent attestation audit of annual financial statements** | 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
- **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 BOSTES when a contract with an external auditor is terminated before the expiry date and the reasons for early termination.

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| 5.9.4 and 3.9.4 /S63A | **BOSTES must be notified of certain matters** | BOSTES, 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
- If the person is a corporation and is subject to winding up or a controller or administrator has been appointed

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Corporations Law 2001
- 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 BOSTES 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 BOSTES with information concerning the registration of each school, **in a form, and at the times, approved by BOSTES** for that purpose.

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**State**

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

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| Section 47          | Part 7, S47 Registration requirements for non-government schools | 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 students** 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 school**, 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. |