Guidelines on the Application of Section 21A of the
Education Act 1990

NSW Department of Education and Communities

May 2012 Update
External Relations Policy Directorate

NSW Department of Education and Communities

First published in November 2007

Updated in June 2010 & May 2012

© State of New South Wales through the NSW Department of Education and Training, 2007. You may copy, distribute, display, download and otherwise freely deal with this work for any purpose, provided that you attribute the Department as the owner. However, you must obtain permission if you wish to (1) charge others for access to the work (other than at cost), (2) include the work in advertising or a product for sale or (3) modify the work.
1 OVERVIEW

Section 21A

Section 21A of the NSW Education Act 1990 (section 21A), is intended to prevent financial assistance under the Act being made available to registered non-government schools that operate “for profit”.

Many schools have a “not for profit” status with the Australian Taxation Office, the NSW Office of State Revenue or conferred under the Charities Act. However for the purposes of these Guidelines, a school is assessed as operating “for profit” against the definitions provided in section 21A and these Guidelines.

The full text of section 21A of the Education Act 1990 is at Appendix D.

Meaning of term “school”

Wherever the term “school” is used in these guidelines, it refers to a registered non-government school within the meaning of Part 7 of the Act.

Operation

The operation of section 21A came into effect from:

☑ For new registered non-government schools: 5 October 2006
☑ For existing registered non-government schools: 1 January 2007

Schools will need to certify at the end of each financial year that they are not operating for a profit.

Tests

Section 21A provides two tests.

Test 1

A school is considered to be operating for a profit, if:

any part of the proprietor’s assets (in so far as they relate to the school) or income (in so far as it arises from the running of the school) is paid to any other person.

Refer Guidelines 1 and 2

OR

Test 2

A school is considered to be operating for a profit, if:

a payment has been made, to any person, in relation to a school’s running costs, where the payment is greater than at “reasonable market value”.

Refer Guideline 6
A failure of either test 1 or test 2 may result in a school being deemed to be operating for profit and may put its financial assistance from the NSW government at risk.

**Exemptions**

Section 21A allows for the following specific payments to be exempt from the above two tests:

<table>
<thead>
<tr>
<th>Exemptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Subsection 3(a) exempts payments made to a person in connection with that person’s activities as a member of a school’s governing body.</td>
</tr>
<tr>
<td>Refer Guideline 3</td>
</tr>
<tr>
<td>2. Subsection 3(b) exempts payments made to students in relation to a prize, scholarship or other activity as student of the school.</td>
</tr>
<tr>
<td>Refer Guideline 4</td>
</tr>
<tr>
<td>3. Subsection 3(d) exempts payments made to a related organisation that does not operate for profit, in connection with the provision of property, goods or services required in relation to the running of the school.</td>
</tr>
<tr>
<td>Refer Guideline 5</td>
</tr>
</tbody>
</table>

**Certification by schools**

The current Financial Accountability Certificate will be amended to make provision for the school to certify that it is compliant with the legislation. A Financial Accountability Certificate will be provided by DET to schools in the year following the calendar year to which the Certificate applies, in line with current practices and timelines.

**Context for these Guidelines**

The Guidelines have been prepared with the general operation of typical schools in mind. The transactions and examples described are intended to cover the most common transactions related to a school’s running costs.

It is possible that further examples of transactions could arise, in which case schools should consider the options provided in Appendix A.

Schools are encouraged to adopt a practical, commonsense approach to the interpretation and implementation of these guidelines. If in doubt about any aspect of your school’s operations in terms of compliance with the Act, contact your peak organisation or the Department of Education and Communities.

The Guidelines should be read in conjunction with the Appendices to the Guidelines.

**Outline of operation of section 21A**

The operation of section 21A is shown in figure 1.
Test 1
Has the proprietor’s assets or income been paid to any person?

Was the payment:
To a member of the school’s governing body, as an honorarium or reimbursement of out-of-pocket expenses? (G3)
To a student for a prize scholarship or other activity as a student of the school? (G4)
To a related not-for-profit organisation in relation to the running of the school? (G5)

Proprietor should sign a declaration at the end of the school’s financial year that it is compliant with the legislation.

Figure 1: Operation of Section 21A

Was the payment for property, goods or services in relation to the running of the school? (Section 21A 3c)

TEST 2
Was the payment at more than reasonable market value?

School may be operating for a profit. The school’s financial assistance from the NSW Government might be at risk.
2 GUIDELINES

<table>
<thead>
<tr>
<th>DETAILED FLOW</th>
<th>COMMENTARY</th>
<th>SUGGESTED RECORD KEEPING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distribution to any person? yes</td>
<td>A distribution of income and assets to any person might deem the school to be operating for profit and endanger its funding.</td>
<td>If a proprietor has made a distribution, then this might be prima facie evidence that the school is not compliant with the legislation. Refer to Appendix A.</td>
</tr>
<tr>
<td>Distribution to any person? no</td>
<td></td>
<td>The proprietor should retain details of the source of the distribution (whether school or non school sourced).</td>
</tr>
<tr>
<td>Interest payment or repayment of principal to any person? yes</td>
<td>An interest payment at higher than market rates could be deemed to be a distribution. The terms of the initial loan may not have been set at arm’s length and the repayment might also be deemed a distribution.</td>
<td>Written loan agreement. Evidence that the loan was granted at commercial rates of interest at the time, or disclosure of the factors that led to the loan being granted at a different rate.</td>
</tr>
<tr>
<td>Interest payment or repayment of principal to any person? no</td>
<td></td>
<td>Documentation detailing the origins and purposes of management or royalty agreements showing:</td>
</tr>
<tr>
<td>Management or royalty fee paid to any person? yes</td>
<td>Payments made as management fees or royalties might not have been established at arm’s length and might be deemed to be a distribution of income.</td>
<td>✤ The services provided under the management agreement. Details and evidence that the fee paid for the services is considered a commercial rate.</td>
</tr>
<tr>
<td>Management or royalty fee paid to any person? no</td>
<td></td>
<td>✤ The intellectual property supplied in return for a royalty.</td>
</tr>
<tr>
<td>DETAILED FLOW</td>
<td>COMMENTARY</td>
<td>SUGGESTED RECORD KEEPING</td>
</tr>
<tr>
<td>---------------</td>
<td>------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td><strong>Guideline 2. Management of assets</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Did the proprietor sell an asset of the school?</th>
<th>yes</th>
<th>Proprietor will need to retain evidence that the sale of an asset was at no less than reasonable market value and that the proceeds were not distributed as income.</th>
</tr>
</thead>
<tbody>
<tr>
<td>no</td>
<td></td>
<td>Purchases and disposals of significant assets must be approved in accordance with the school’s governance policies and standard accounting procedures and a written record maintained including details of authorising party.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Did the proprietor swap a school’s asset in return for goods or services or some other benefit?</th>
<th>yes</th>
<th>Proprietor will need to retain evidence that goods or services or benefit were applied to the running of the school.</th>
</tr>
</thead>
<tbody>
<tr>
<td>no</td>
<td></td>
<td>Documentation of asset swap. Evidence of market testing (such as written quotations or professional valuations for similar assets), to identify reasonable market value.</td>
</tr>
</tbody>
</table>

| Continues next page | no | For property assets, maintain a written valuation. For forgiveness of financial assets (such as debts), documented authority from the school’s governing body. The forgiveness of financial assets does not include the waiving of school fees under proper authority. |
### Guideline 2. Management of assets

<table>
<thead>
<tr>
<th>DETAILED FLOW</th>
<th>COMMENTARY</th>
<th>SUGGESTED RECORD KEEPING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has an asset stocktake been conducted?</td>
<td>It is desirable to have an asset register and regular asset stocktake to identify if school assets have been transferred to other parties.</td>
<td>Development of policies and procedures relating to school assets. Development of an assets register.</td>
</tr>
<tr>
<td>yes</td>
<td>An asset can be defined as anything of material value or usefulness that is owned by a person or school. Assets may be large value, material items, such as cars, or small portable items valued over $1000 such as computers, electronic whiteboards, musical instruments, equipment used in various subjects such as drama, science, sports and industrial technology.</td>
<td>Conduct a rolling asset stocktake with all assets reconciled to the assets register. All items listed on the assets register should be sighted during the stocktake.</td>
</tr>
<tr>
<td>no</td>
<td>Evidence of a rolling stocktake and policies and procedures relating to asset management will need to be retained by the school.</td>
<td>An Asset register should contain information such as a description of the item, the make and model of the item, the serial number, the date of purchase, the cost of purchase, invoice number, date of disposal, method of disposal (auction, sale, written off etc). Asset registers should be updated regularly, rather than a new register being created each time.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The write off of all assets not located at stock take should be authorised in accordance with the school's governance procedures.</td>
</tr>
</tbody>
</table>
### Guideline 3. S21A (3a) Payments to members of the school’s governing body

<table>
<thead>
<tr>
<th>DETAILED FLOW</th>
<th>COMMENTARY</th>
<th>SUGGESTED RECORD KEEPING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was the payment to a member of the governing body?</td>
<td>The payment must be to a member of the school’s governing body, not to another party. The member may be a past or current member of the governing body or a person duly appointed as a future member of the governing body.</td>
<td>Please Refer to Guideline 6.</td>
</tr>
<tr>
<td></td>
<td>The payment may be a payment incurred by executive members of the governing body but must be related to the running of the school. The person must have been a member of the governing body at the time that the liability for the payment was incurred.</td>
<td>Development of policy and procedures to regulate the engagement of members of the school’s governing body where they were engaged to provide services to the school. Please also Refer to Guideline 6.</td>
</tr>
<tr>
<td>Is the payment related to the running of the school?</td>
<td>Payable to directors appointed in accordance with legislation, for example the Corporations Act 2000.</td>
<td>Tax invoice from external directors; certified by individual within school with sufficient financial delegation. Resolution of the Board approving directors’ fees. Director’s register showing person was a director at time liability for payment was incurred.</td>
</tr>
<tr>
<td></td>
<td>yes</td>
<td>no</td>
</tr>
<tr>
<td>Director’s fee?</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td></td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>Continues next page</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
These expenses must have a bona fide connection with the governance and management of the school. Expenses must have been incurred by a member of the governing body (not just on behalf of or authorised by a member of a governing body).

An honorarium is a payment in recognition of acts or professional services “for which custom or propriety forbids a price to be set”.

For example a compensation payment.

Receipts, signed voucher or travel/expenditure form in accordance with the school’s purchasing policies or procedures.

Signed letter of offer from school’s governing body, providing detail of what the payment was related to.

Receipts, signed voucher or travel/expenditure form in accordance with the school’s purchasing policies or procedures.

Signed letter of offer from school’s governing body, providing detail of what the payment was related to.
**Guideline 4. S21A (3b) Payments to students**

<table>
<thead>
<tr>
<th>DETAILED FLOW</th>
<th>COMMENTARY</th>
<th>SUGGESTED RECORD KEEPING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation payout?</td>
<td>For compensation payment, the recipient must be a current or past student (or the parent/guardian of a past student who is the subject of the compensation claim).</td>
<td>Legal document (for example a deed of settlement) signed by both school and student (or parent/guardian). Written authorisation of governing body.</td>
</tr>
<tr>
<td>Ex gratia payout?</td>
<td>For example compensation for lost or damaged property.</td>
<td>Documented policies and procedures relating to ex-gratia payments. Such a policy may include evidence of the letter to student signed by responsible school officer providing reason for payment.</td>
</tr>
<tr>
<td>Payment of cash prize or scholarship or bursary?</td>
<td>Includes monetary amounts accompanying prizes, scholarships and bursaries.</td>
<td>Documented policies and procedures relating to the awarding of cash prizes, scholarships and bursaries.</td>
</tr>
</tbody>
</table>

Continues next page
<table>
<thead>
<tr>
<th>DETAILED FLOW</th>
<th>COMMENTARY</th>
<th>SUGGESTED RECORD KEEPING</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Guideline 4. S21A (3b) Payments to students</strong></td>
<td><strong>Student fee discounts based on hardship, sibling discounts, students of staff etc; student fee bad debt write off.</strong></td>
<td><strong>Documented policies and procedures relating to student fee discounts, fee adjustments or bad debt write offs.</strong></td>
</tr>
<tr>
<td>Student fee discounts</td>
<td>yes</td>
<td></td>
</tr>
</tbody>
</table>

Guideline 4. S21A (3b) Payments to students

Student fee discounts based on hardship, sibling discounts, students of staff etc; student fee bad debt write off.

Documented policies and procedures relating to student fee discounts, fee adjustments or bad debt write offs.
Guideline 5. S21A (3d) Payment to Related Organisations

Please also refer to Appendix A

<table>
<thead>
<tr>
<th>DETAILED FLOW</th>
<th>COMMENTARY</th>
<th>SUGGESTED RECORD KEEPING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engagement of related parties</td>
<td>A related party is defined in Australian Accounting Standards. For example, a member of the school council. Engagement of related parties within the school. Inappropriate engagement of related parties within the school may be seen as distribution of profit.</td>
<td>Development of policies that ensure appropriate procedures are in place so that related party transactions are determined on a fair and reasonable basis. Transactions should also be accountable, transparent and value for money. Proof that the engagement of related parties within the school was market tested before the authorisation of the engagement. Evidence of authorisation of the engagement by the Schools Governing body. Refer to Guideline 6 for details regarding tendering and written quotes, and also Appendix A</td>
</tr>
<tr>
<td>Payment to any related organisation?</td>
<td>Payment to a related organisation is limited to payment for property, goods and services at no more than reasonable market value.</td>
<td>Require the same documentation as for Guideline 6. Purchase documentation must detail the nature of property, goods and services acquired. Please also refer to Appendix A for further information.</td>
</tr>
<tr>
<td>Is recipient organisation not for profit?</td>
<td>A non profit organisation is defined as compliant with section 21A. Payment may be regarded as a distribution of income and may endanger its funding.</td>
<td>The onus is on the school’s proprietor making the payment to obtain satisfactory evidence of the not for profit nature of the recipient of the payment. Note that the evidence obtained by the proprietor needs to support all transactions with the related organisation for that particular year. School proprietors should seek advice from their peak organisation and/or contact the Department of Education and Communities</td>
</tr>
</tbody>
</table>
### Guideline 6. Payments of school running costs

<table>
<thead>
<tr>
<th>DETAILED FLOW</th>
<th>COMMENTARY</th>
<th>SUGGESTED RECORD KEEPING</th>
</tr>
</thead>
</table>
| **Goods and services acquired by tender?** | Key elements of effective governance in the private and public sector require that there should be effective processes in place to ensure:  
☐ Accountability  
☐ Probity  
☐ Value for money  
☐ Reasonable transparency.  
Detailed purchasing manuals or documented policies will ensure that good governance processes are followed. | Purchasing policies or manual proportionate to the size of the school. A purchasing policy or manual should include the use of delegations of expenditure, tenders, tender evaluation processes, quotations, market testing of contracts and related party transactions.  
Copy of tender process including respondents and respondent’s prices maintained in relevant file.  
Documentation should be sufficient to substantiate that the payment:  
☐ was for school running costs; and  
☐ was at no more than “reasonable market value”. |
| yes | | |
| no | | |
| **Written quotes required under the proprietor’s purchasing policy for the school?** | | Copy of written quotes as per proprietors purchasing policy or manual.  
Documentation should be sufficient to substantiate that the payment:  
☐ was for school running costs; and  
☐ was at no more than “reasonable market value”. |
| yes | | |
| no | | |
| Continues next page | | |

**Yes**

**No**
### Guideline 6. Payments of school running costs

**DETAILED FLOW**

Verbal quotes obtained under the proprietor’s purchasing policy for the school?

- **yes**

In absence of a verbal quote, the process of decision making will be appropriately documented.

- **no**

**COMMENTARY**

File notes for verbal quotes should substantiate that the payment:

- was for school running costs; and
- was at no more than “reasonable market value”.

File notes should include details of the project the quote was requested for, the company providing the quote and the amount of the quote.

**SUGGESTED RECORD KEEPING**

Other record keeping:

- Purpose and approval for all internet transfers should be documented.
- All cheques should be made on a cheque requisition, or voucher, supported by a certified tax invoice.
- Payroll payments (including deductions) should be supported by signed payroll report.
- Vouchers should be approved by a different person from the one who is certifying the delivery of service.
- Spot checking of significant payments by an independent and experienced person to support the control environment.

Continues next page
## Guideline 6. Payments of school running costs

<table>
<thead>
<tr>
<th>DETAILED FLOW</th>
<th>COMMENTARY</th>
<th>SUGGESTED RECORD KEEPING</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tenders let and quotes for building works obtained under the proprietor's purchasing policy for the school?</strong></td>
<td>Tenders let and three written quotes for building works obtained for each building project</td>
<td>Development of policies and procedures for building works. A tender for each project should be written and approved by the Principal or Principal’s nominee and a copy provided to the school’s governing body for noting. Generally three quotes for each tender should be sought wherever possible. Documentation of the assessment process associated with each tender should be retained by the school. The outcome of the tender process should be reported to the school’s governing body and a record of this kept by the school.</td>
</tr>
<tr>
<td><strong>Supplier invoices certified and approved?</strong></td>
<td>Certification of supplier invoices</td>
<td>Each invoice received by the school should be certified by the member of staff who requested the goods or service that the service has been completed or the goods have been received. Approval for payment of supplier invoices should be noted on the invoice by an appropriately delegated officer, such as the Principal or Principal’s nominee.</td>
</tr>
<tr>
<td><strong>Credit cards certified and approved?</strong></td>
<td>Credit Card Certification</td>
<td>Development of policy and procedures surrounding the allocation and use of credit cards and store charge cards by school staff. Each credit card statement should be signed by the card holder stating that expenditure was for school purposes and that all entries on the statement are correct. Receipts for all purchases should be attached to each statement. Cardholders should not approve reimbursement</td>
</tr>
<tr>
<td>Continues next page</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Guideline 6. Payments of school running costs

<table>
<thead>
<tr>
<th>DETAILED FLOW</th>
<th>COMMENTARY</th>
<th>SUGGESTED RECORD KEEPING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff payroll approved and authorised?</td>
<td>yes</td>
<td>Payroll</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
A Related Party in relation to Schools may be a member of, or a close relative of the schools Governing Body, Board of Directors or senior management of the school, or a
company, partnership, trust or association which is controlled by a member of, or a close relative of the school’s Governing Body or senior management.

For example, a Related Party transaction may be where the school enters into a contract for services with a company owned by a member of the school’s Board of Directors.

AASB 124 Related Party Transactions defines related party transactions as:
“a transfer of resources, services or obligations between related parties, regardless of whether a price is charged”.

Guidelines

Guideline 5 to Section 21A addresses payments to Related Organisations. Guideline 5 states that payment to a related organisation is limited to payment for property, goods and services at no more than reasonable market value. If payment is not made to a not for profit related organisation, payment in excess of reasonable market value may be regarded as a distribution of income and may endanger the school’s funding.

Guidance on Related Party Transactions

Documentation available in relation to Related Party Transactions has been reviewed including, including the Education Act 1990, Section 21A Guidelines, Australian Accounting Standards and other publications which could be considered better practice guidelines in this area.

Set out below is commentary which provides high level guidance in regards to School’s treatment of Related Party Transactions. If in doubt, the School should contact their local peak representative body for further guidance and advice in this area.

2. The Policies and Procedures should be reviewed and approved by the relevant Governing Body of the School.
3. Policies and Procedures document should state:
   a. The Purpose of the Document
   b. The Scope of the Policy & Procedure
   c. Define what a related party may be and what related party transactions may be
   d. Identify the Policies in place in relation to Related Party Transactions
   e. Detail procedures required to be followed in relation to Related Party Transactions
   f. Identify a person responsible for monitoring and managing related party transactions.
4. Implement Policies and Procedures in a structured and formal manner

Detailed commentary in relation to Point 3 above

3. The Policy and Procedure document should state:
i. The purpose of the document should be to ensure there are appropriate procedures in place such that related party transactions are determined on a fair, reasonable and consistent basis

b. The Scope of the Policy & Procedure
   i. by defining what is a Related Party and the nature of transactions which may be captured - eg: purchase of assets or investments, commitment of capital or ongoing expenditure.

c. Define what a related party may be and what related party transactions may be
   i. Refer to definition within Australian Accounting Standards - eg: member of the school council and their immediate family or a business entity in which they have a controlling interest.

d. Identify the Policies in place in relation to Related Party Transactions
   i. Require approval by the Governing Body (or equivalent authority such as School Council or Finance Committee) of all Related Party Transactions prior to the transaction being executed
   ii. Require disclosure of the transaction in the appropriate forum
       1. Disclosure could be made in the Annual Financial Report, Board of Directors meeting minutes

e. Detailed procedures required to be followed in relation to Related Party Transactions
   i. Normal procurement procedures should be followed for Related Party Transactions ie: Purchase Orders should be used where applicable
   ii. review and approval processes for Related Party Transactions
       1. Generally any related party transaction should be reviewed and approved by the Governing body (or equivalent authority) prior to execution
       2. That review should ensure consideration is given to the market value of goods or services being provided and the terms and conditions of the transaction to ensure the transaction is executed at commercial terms and conditions and reasonable market rates
       3. The Related Party should abstain from voting when any Related Party Transaction is being considered at a meeting of the members
       4. The review should be recorded in the governing bodies meeting minutes

f. Responsibility for monitoring the transaction should be identified and allocated
   i. Responsibility for certain aspects of the transaction may include the purchasing officer or accountant (transactional processing aspects), Bursar or Business Manager and Governing body (review and approval)
B. Exceptions and anomalies

1. Some schools are large and complex financial organisations and may have transactions and/or arrangements that may not be covered by these Guidelines. In these cases the school should contact the school’s peak organisation or Corporate Office and seek further guidance.

2. If a school cannot obtain a resolution to its issue or it has identified that the school may be considered to be operating for profit, then the school should contact the Non-Government Schools Funding Unit, NSW Department of Education and Communities telephone (02) 9244 5610.
C. Frequently asked questions

Q: Our school is already a not for profit school. How does section 21A affect our current not for profit status?

Many schools have a “not for profit” status with the Australian Taxation Office, the NSW Office of State Revenue or conferred under the Charities Act. However for the purposes of these Guidelines, a school is assessed as operating “for profit” against the definitions provided in section 21A and these Guidelines.

Q: Our school sometimes gives away old computer equipment and receives goods or services in return.

A payment can be received by the school in either cash or kind (payment made in goods or services). Section 21A (3) (c) requires that payments for goods and services, which are acquired for the running of the school, must be at no more than “reasonable market value”. If the payment received for old equipment is more than reasonable market value, it may affect the school’s not-for-profit status.

Q: What is “no more than reasonable market value” for broken, damaged or obsolete goods or assets?

‘Reasonable Market Value is defined as the amount which would be paid by a knowledgeable, willing party, at arms length to the seller.’ Reasonable Market Value may be less than book value or the school’s holding cost.

Q: Are the Guidelines retrospective?

The Guidelines only apply to transactions, occurring after 1 January 2007 for existing schools. If transactions that occurred after 1 January 2007 result in a school being deemed ‘for profit’, because of prior administrative arrangements, the school should contact the NSW Department of Education and Communities (see Appendix A).

Q: What if I am selling or purchasing a school?

The Guidelines do not address issues related to divestment or acquisition of schools or corporate restructuring. These are less common events and not associated with the typical running of a school. A school proprietor, who is processing transactions arising from such restructuring, should seek further advice.

Q: What should our school do if we think we may be in breach of section 21A?

Contact your peak organisation or the Department of Education and Communities Non-Government Schools Funding Unit on (02) 9244 5610 without delay.
D. Contacts and references

If schools require an overview of the context of section 21A, copies of the NSW Education Act 1990 can be accessed at www.legislation.nsw.gov.au

Details of Australian Accounting Standards are available from the Australian Accounting Standards Board which can be accessed at www.aasb.com.au
E. Section 21A

21A Financial assistance not to be paid to registered non-government schools operating for profit

(1) Financial assistance under section 21 may not be paid (whether by way of per capita grant or otherwise) to or for the benefit of a registered non-government school that operates for profit.

(2) A non-government school is taken to operate for profit if any part of its proprietor's assets (in so far as they relate to the registered non-government school) or income (in so far as it arises from the running of the registered non-government school) is paid to any other person.

(3) Despite subsection (2), a registered non-government school is not taken to operate for profit just because of:

(a) any payment that its proprietor makes to a person in connection with the person's activities as a member of the governing body of the registered non-government school, being a payment made by way of an honorarium or as reimbursement for out-of-pocket expenses, or

(b) any payment that its proprietor makes to a student of the registered non-government school in connection with any prize, scholarship or other activity as a student of the registered non-government school, or

(c) any payment that its proprietor makes to a person in connection with the provision, at no more than reasonable market value, of property, goods or services required in relation to the running of the registered non-government school, or

(d) any payment that its proprietor makes to a related organisation that does not operate for profit, within the meaning of this section, in connection with the provision of property, goods or services required in relation to the running of the registered non-government school.

(4) If the Minister is of the opinion that a registered non-government school receiving financial assistance under section 21 may be operating for profit, the Minister may, by order in writing, require its proprietor to furnish the Minister with information concerning any contracts or other arrangements entered into by the proprietor for the provision of property, goods or services in relation to the running of the registered non-government school.
F. Definitions

These Guidelines use the following meanings for key terms. Note that this list is not comprehensive and some definitions (for example in Australian Accounting Standards) require reference to other definitions.

1. Assets

An asset is defined as:

\textit{A resource:}
(a) controlled by an entity as a result of past events; and
(b) from which future economic benefits are expected to flow to the entity.

As provided in the AASB Glossary of Defined Terms and in AASB Accounting Standard 138 \textit{Intangible Assets}.

A common sense approach should be taken when determining what is a “significant” asset for the purpose of Guideline 2. If in doubt about the status of any particular asset, seek advice from your peak organisation and/or a ruling from the Department of Education and Communities.

2. Payments

For the purposes of these Guidelines, a payment may be made in cash or in kind.

3. Income

In these guidelines “income” uses the definition provided in the Australian Accounting Standards Board (AASB) “Framework for the Preparation and Presentation of Financial Statements”, paragraphs 74 to 77, which are reproduced below

74. The definition of income encompasses both revenue and gains. Revenue arises in the course of the ordinary activities of an entity and is referred to by a variety of different names including sales, fees, interest, dividends, royalties and rent.

75. Gains represent other items that meet the definition of income and may, or may not, arise in the course of the ordinary activities of an entity. Gains represent increases in economic benefits and as such are no different in nature from revenue.

76. Gains include, for example, those arising on the disposal of non-current assets. The definition of income also includes unrealised gains; for example, those arising on the revaluation of marketable securities and those resulting from increases in the carrying amount of long-term assets. When gains are recognised in the income statement, they are usually displayed separately because knowledge of them is useful for the purpose of making economic decisions. Gains are often reported net of related expenses.

77. Various kinds of assets may be received or enhanced by income. Examples include cash, receivables and goods and services received in exchange for goods and services supplied. Income may also result from the settlement of liabilities. For example, an entity may provide goods and services to a lender in settlement of an obligation to repay an outstanding loan.
4. **Proprietor**

The NSW *Education Act 1990* defines a proprietor, in relation to a school, as “the legal entity designated, in the school’s certificate of registration, as the proprietor of the school”.

5. **Reasonable market value**

For the purposes of these Guidelines, “Reasonable Market Value” is defined as the amount for the product or service, which would be paid by a knowledgeable, willing party, at arms length to the seller.

6. **Running of a school**

Defined as any operating cost which would be incurred in the operation of a school registered under Part 7 of the Education Act.

7. **School**

In these Guidelines a school is taken to be singular and all reference is to an individual school. As a consequence, if one school in a system is deemed to be operating for a profit (as defined in section 21A), then that classification will not affect the not for profit status (as defined in the Act and further elaborated in these Guidelines), of the other schools in the system.

8. **Related organisation**

A related organisation has the same meaning as a related party in AASB 124 “Related Party Transactions” or relevant state legislation applicable to school or school authority. A related organisation may be a natural person.

9. **Person**

In these Guidelines the term “person” can also refer to a body corporate.

10. **Distribution**

In these Guidelines a distribution is any payment made from a school’s accumulated earnings, reserves or repayment of equity.

11. **Commercial rate of interest**

In these Guidelines a commercial rate of interest is the interest rate, not greater than an interest rate at the prevailing market rates, at the time that the loan was negotiated.

12. **Governance**

In these Guidelines the term ‘governance’ is the collection of administrative arrangements, policies and procedures which in combination ensure that the school meets its legislative obligations and the expectations of its community and stakeholders.
G. Assumptions

These Guidelines assume that the school is operating to the following standards and capabilities.

<table>
<thead>
<tr>
<th>Element</th>
<th>Guidelines assumption</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts preparation</td>
<td>A school is assumed to have the ability to prepare a DEST Financial Questionnaire which includes reference to Australian Accounting Standards.</td>
<td></td>
</tr>
<tr>
<td>Governance</td>
<td>Written governance documents such as Memorandum and Articles of Association for a school incorporated under the Corporations Act.</td>
<td></td>
</tr>
<tr>
<td>Delegation listing of school office holders</td>
<td>A delegation is the delegation of authority from the school’s governing body. Should have a written list of persons or positions and their relevant authority, authorised by the school’s governing body.</td>
<td>In the absence of written delegation authority, the authority of the school’s governing body is required for transactions which are shown in these Guidelines as being approved under delegation.</td>
</tr>
<tr>
<td>Purchasing of goods and services</td>
<td>A purchasing manual providing policies or procedures for the school’s acquisitions and disposals.</td>
<td>Schools without a purchasing manual or policies should consult their peak body for advice.</td>
</tr>
</tbody>
</table>