

GUIDELINES – CONDITIONS OF REGISTRATION

Introduction

In 2017, the *Education Act 1990* ('the Act') was amended to introduce section 53A providing for the Minister to impose enforceable conditions on the registration of a non-government school.

This provision enhances NESA's regulatory powers by allowing for specific and targeted responses to better fit the nature and extent of a compliance concern.

The *Registered and Accredited Individual Non-government Schools (NSW) Manual* and the *Registration Systems and Member Non-government Schools (NSW) Manual* ('the Manuals') identify the provisions of section 53A of the Act.

These Guidelines supplement the information in the Manuals by:

- identifying when conditions might be applied;
- describing the process for NESA to apply conditions; and
- providing some examples of conditions that may be considered.

When might conditions of registration be recommended?

The application of conditions of registration will be in response to, and commensurate with, the specific circumstances relating to the non-government school and the compliance concerns as well as any known risk factors.

Typically, recommendations relating to conditions of registration would follow an inspection process where the school has been provided with the opportunity to address a compliance concern and the school has yet to address that concern to the satisfaction of an Inspector.

Conditions of registration may be recommended by an Inspector:

- when it has been identified that there is a compliance concern and NESA is satisfied that the school has the capacity to address the compliance concern; and/or
- when a school has belatedly responded to a compliance concern and evidence of sustained compliance is sought by NESA; and/or
- when NESA seeks assurance that planned improvements are being implemented; and/or
- in any other circumstance where an Inspector forms the view that a condition of registration is warranted.

The application of conditions may be in addition to other measures such as monitoring or an extension of a school's registration period under section 55 of the Act. Conditions of registration may also apply to schools granted the maximum period of registration.

If an Inspector finds that a school is not complying with the requirements of registration, the Inspector will recommend cancellation and/or refusal of registration. In these cases, conditions of registration would not apply.

What is the process for imposing conditions on a school's registration?

If an Inspector identifies that conditions of registration are warranted, the Inspector will include a relevant recommendation in the inspection report.

The report will identify the reason for the recommendation, the recommended condition and the recommended period or duration of the condition.

A copy of the report will be provided to the school and the school will be invited to respond in writing to the report.

The report, and any written response from the school, will be considered by the NESA School Registration Committee ('the Committee').

Following the Committee's consideration, the school will be advised of the Committee's decision.

If the Committee decides to recommend to the Minister that conditions be placed on the school's registration, the school may seek an internal review of the decision. The internal review process is described in the Manuals.

The school will be advised of the outcome of an internal review.

There is no recourse to the NSW Civil and Administrative Tribunal ('NCAT') against recommendations to impose conditions on a school's registration.

Under the Act, the Minister has the authority to impose a condition on a school's registration.

If a condition of registration is approved, the school will be advised in writing and the conditions will be specified in the school's certificate of registration.

NESA will also publish the conditions on its website.

The school will be required, as a condition of registration, to advise parents of students in writing of the conditions and that the conditions are published on NESA's website.

If conditions are placed on a school's registration, the school's proprietor is responsible for ensuring that the conditions are met.

If a school fails to comply with the conditions, NESA will consider a recommendation to reduce the school's period of registration or, if non-compliance is found, to cancel and/or refuse the school's registration.

What are some examples of possible conditions of registration?

The attachment provides an overview of possible conditions in response to example compliance concerns. This is not an exhaustive list.

A recommendation from an Inspector for conditions of registration to be applied will respond to the particular reason for the recommendation and any other relevant risk factors such as the school's history of compliance, the school's level of responsiveness to date and other contextual matters.

While the list of examples do not describe a precise hierarchy of escalation for the relevant area of concern, the strictest conditions would not typically be applied without a school having been provided earlier opportunity to address the concern.

Requirement	Example Concern	Example Conditions that may be applied
Proprietor and Principal	School has a number of areas of concern that reflect ineffective day-to-day management and oversight of the school's operation.	That the school provide to NESAs, within two months, a plan to address the compliance concern in relation to the day-to-day management of the school.
Teaching staff	School's teaching staff does not have the holistic capacity to deliver the curriculum for which the school is registered/accredited.	That the school provide to NESAs, within three months, evidence of improving the holistic capacity of the teaching staff to deliver the curriculum, for example through targeted professional learning, employment of additional staff with particular experience/expertise, implementation of a mentoring program, collaboration with another school.
Curriculum	School does not keep evidence of curriculum delivery.	That the school provide evidence of relevant professional development of teaching staff within three months.
		That the school provide to NESAs, within one month, a plan to address the compliance concern in relation to curriculum.
		That the school provide to NESAs, on a bi-monthly basis for a period of 12 months, a status update on the implementation of its plan to address the compliance concern.
		That the school not seek initial registration for new Years of schooling or registration for a new campus until one year after the Inspector is satisfied that the curriculum concern has been addressed.
Premises	School's physical infrastructure poses a risk to students (eg asbestos located on the site).	That the school provide parents and NESAs with a bi-monthly report for a period of 12 months to describe how the issue is being managed and resolved.
		That the school not accept further student enrolments until NESAs is satisfied that the risk has been addressed.

Requirement	Example Concern	Example conditions that may be applied
Facilities	School lacks the facilities necessary to deliver one or more courses.	That the school provide to NESAs a plan and a bi-monthly status report, for a period of 12 months, to describe how the issue is being managed and resolved.
Child protection	School does not consistently implement Working with Children Check clearance processes for all persons engaged in child-related work.	<p data-bbox="1084 411 2045 549">That the school provide to NESAs, within three months, revised procedures to provide more specific guidance for staff on the process for maintaining and monitoring Working with Children Check clearances for all persons engaged in child-related work.</p> <p data-bbox="1084 580 2045 718">That the school provide to NESAs within seven days of the employment of any new person in child-related work, evidence that the person has a Working with Children Check clearance or that a clearance request has been submitted.</p> <p data-bbox="1084 750 2045 887">That the school provide to NESAs a bi-monthly report or copy of a Working with Children Check register, for a period of six months, to demonstrate evidence of implementing Working with Children Check clearance processes for all persons engaged in child-related work.</p>
Student welfare - Complaints	School does not consistently implement processes for handling complaints.	<p data-bbox="1084 919 2045 1024">That the school provide to NESAs, within three months, revised procedures to provide more specific guidance for staff on the expected process for handling complaints and the records to be maintained.</p> <p data-bbox="1084 1056 2045 1120">That the school's Principal and one other responsible person undertake training in best practice complaint handling procedures.</p> <p data-bbox="1084 1152 2045 1257">That the school provide to NESAs a bi-monthly report or copy of a complaints register, for a period of six months, to demonstrate evidence of consistent complaints handling.</p>

Requirement	Example Concern	Example conditions that may be applied
Discipline	School does not consistently implement procedural fairness in dealing with issues relating to the suspension and expulsion of students.	That the school provide to NESA, within three months, revised procedures to provide more specific guidance on how procedural fairness is applied in dealing with the suspension and expulsion of students.
		That the school provide a six monthly report to NESA in relation to all students who were suspended or expelled, demonstrating how procedural fairness was applied.
Attendance	School does not consistently implement the common codes approved by the Minister in the register of attendance.	That the school provide to NESA a bi-monthly report or copy of its attendance register, for a period of six months, showing the use of the common code approved by the Minister.
	School does not consistently maintain all required fields of data in the register of enrolments.	That the school provide to NESA a bi-monthly report or copy of its enrolment register, for a period of six months, showing the maintenance of all required fields of data in its register of enrolments.
Management and operation	School has a responsible person who may not be a fit and proper person. School does not consistently implement policies and procedures for proper governance.	That the person be precluded or removed from being a responsible person for the school.
		That the school provide to NESA, within three months, revised procedures that provide more specific guidance on, for example, registering conflicts of interest or related party transactions and keeping appropriate records.
		That the school's responsible persons undertake governance training specified by NESA.
		That the school not seek initial registration for new Years of schooling or registration for a new campus until one year after the Inspector is satisfied that policies and procedures for proper governance are being implemented.

Requirement	Example Concern	Example Conditions that may be applied
		<p>That the school provide to NESAs a bi-monthly report or copy of the relevant register, for a period of six months, showing evidence of consistent registering of conflicts of interest and related party transactions.</p> <p>That the school publish its conflicts of interest register and related party transactions register for the past 12 months on the school's website.</p>
Boarding facilities	Boarding premises pose a risk to students (eg asbestos located on the site).	<p>That the school provide a six monthly report to NESAs to describe how the issue is being managed and provide a status report including when the issue is due to be resolved.</p> <p>That the school not accept further student enrolments for boarding until NESAs is satisfied that the issue regarding the premises is rectified.</p>
Various requirements	<p>School's registration has been extended due to compliance concerns relating to a number of requirements that pose a risk to the safety, welfare or education of students.</p> <p>If any condition of registration is approved by the Minister.</p>	<p>That the school not seek initial registration for new Years of schooling or registration for a new campus until the school's registration has been renewed.</p> <p>That the school publish on its website an unabridged list of conditions in force on the school's registration within 14 days of the conditions being applied.</p>