

Related Party Transactions

Under the *Education Act 1990* (the Act), a school's responsible persons must have policies and procedures for the proper governance of the school, including for related party transactions.

It is important for a school's responsible persons to accurately identify related parties and carefully manage and record any related party transactions to ensure they are acting in the school's best interest by being transparent and accountable.

What is a Related Party Transaction (RPT)?

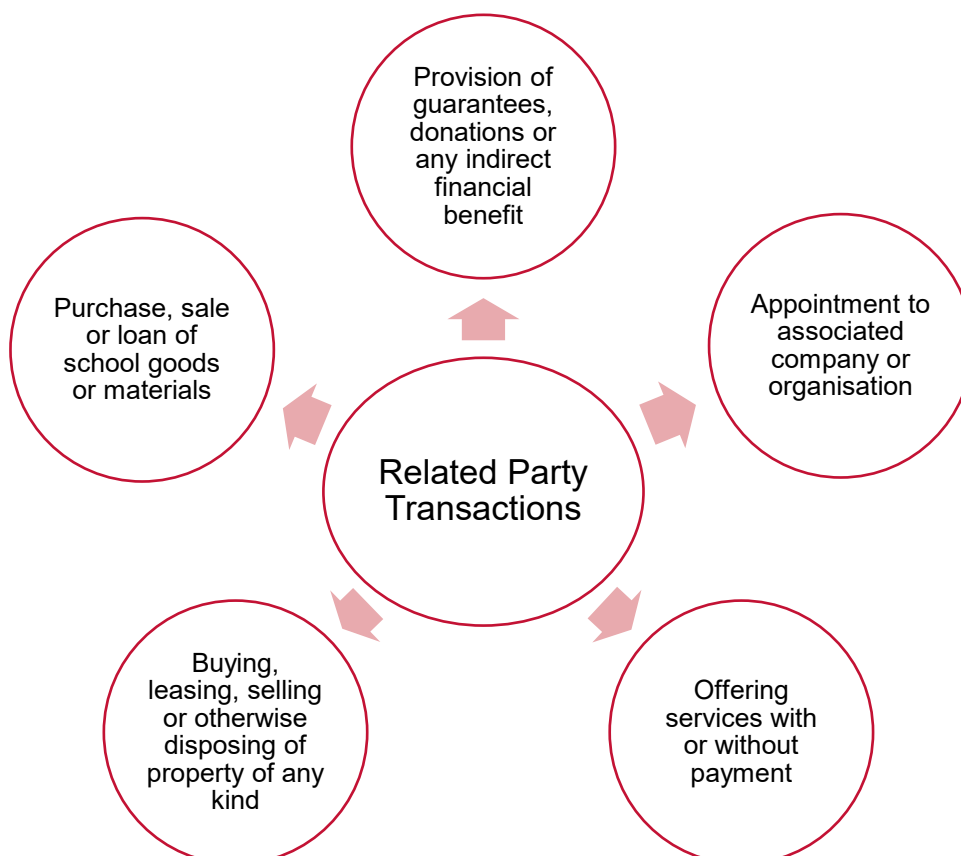
A RPT is any transaction where a related party receives a financial or other tangible benefit because of the transaction.

Who could be a related party?

Related parties are those who have a familial relationship or close personal or professional association with a responsible person. Examples may include a responsible person's:

- a spouse or immediate family member
- other relatives
- close friends or associates
- related organisations or businesses.

What are some examples of types of RPTs?



Are RPTs allowed?

Yes. RPTs are common and typically do not cause a problem for a school if they are appropriately managed and recorded. Typically, this means managing the decisions about the transaction transparently and proactively, so that decisions are free from conflict of interest and are in the best interest of the school.

When should the school identify the RPT?

All RPTs should be disclosed to the school's governing body. As a standing item, the agenda for each Board or governance meeting should provide opportunity for responsible persons to make RPT declarations. These disclosures and associated decisions and actions are then recorded in the minutes of the meeting.

Responsible persons are also required to declare conflicts of interest annually and as they arise. Having a register of conflicts of interest assists schools to consider whether a proposed transaction represents a RPT.

What is a RPT register and what might you include?

A RPT register is a cumulative record of all the school's related party transactions. The register records enough detail of each transaction to be clearly identifiable as being for the benefit of the school rather than the individual.

To accompany the register, schools should consider maintaining other records relating to the transactions, such as invoices, receipts, bank statements, meeting minutes, and conflict of interest declarations.

A [sample RPT register](#) is available on the NESA website.

Scenario 1

The responsible persons at an independent non-government school wish to hire a new supplier to service the school canteen. After advertising, they receive an application from a company owned by the brother of a responsible person. The School Board will consider the application at their next meeting.

Possible Solution

- *the responsible person discloses their conflict of interest and the proposed RPT at the opening of the Board meeting*
- *the Board records details of the conflict in the minutes*
- *the responsible person leaves the room when discussions of the contract occur and does not participate in voting*
- *the Board decides they need multiple quotes to determine whether the quote provided by the responsible person's brother represents fair market value*
- *when additional quotes are received, the Board considers all quotes and selects one, having considered fair market value and keeping the transaction at arm's length*
- *the Board ultimately decides to employ the company owned by the responsible person's brother and documents their decision and reasons for doing so*
- *the Board records plans for ongoing management of conflict of interest arising from the contract*
- *the Board records the details of the RPT in the RPT register.*

What are transactions at ‘arm’s length’ and what is ‘reasonable market value’?

A financial transaction is at arm’s length when the parties act independently and with equal bargaining power. Transactions should take place without either party unfairly influencing each other.

When at arm’s length, the interests of the school are served before those of the related parties.

When entering into RPTs, schools may seek to establish that transactions are made at reasonable market value by demonstrating that transactions are for the benefit of the school rather than the individuals involved in the transaction.

Scenario 2

The governing body of an independent non-government school decided to review its policies and procedures for school transactions to be made at reasonable market value. This was to assist the school when managing RPTs.

The school’s policies and procedures were strengthened with the inclusion of the following practices:

- obtaining more than one independent valuation when leasing property or when buying or selling property, goods or services above a certain value
- using a formal tendering process for contractual arrangements and higher value transactions
- using of a list of preferred suppliers and contractors
- assessing and monitoring suppliers and contractor’s performance on a routine basis
- staff training around anti-fraud and corruption, contracting and procurement.

What evidence does a school need to retain?

The [registration manual](#) provides details of the evidence of compliance required by NESA.

NESA may request evidence that includes all or some of the following:

- policies and procedures requiring responsible persons to disclose any RPTs made on behalf of the school’s proprietor or governing body
- a register of all related party transactions
- records of RPT registers for the past 7 years
- annual audits of the school’s RPT register by an external independent auditor
- a copy of the school’s contract or arrangement with an external auditor
- evidence of notifying NESA if the contract with the auditor was terminated prior to expiry.

Other obligations

When considering how to manage RPTs, proprietors of not-for-profit schools have legislative obligations under section 83C of the Act as well as to agencies other than NESA.

For further information, proprietors may wish to seek legal advice or contact the [NSW Department of Education](#), Australian Securities and Investment Commission ([ASIC](#)) or the Australian Charities and Not-for-profits Commission ([ACNC](#)).