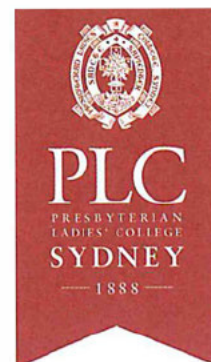


Friday, 23 February, 2024

Re: Review of Section 83C of the Education Act 1990 (NSW)

By email: [section83review@nesa.nsw.edu.au](mailto:section83review@nesa.nsw.edu.au)



Dear Mr Alegounarias

We greatly value the opportunity to contribute to the review of section 83C of the Education Act 1990 (NSW).

While we appreciate the attempts that have been made to review and improve the guidelines for 83C over a number of years, despite these diligent processes, there remain concerns that we believe require attention.

#### Enforcement in Line with Original Intent

We believe enforcement has departed from the legislation's original intent. The regulatory approach should be guided by the intent articulated when the legislation was introduced. The reasons for the legislation are sound, however, its implementation has caused significant costs for the industry, often over immaterial items. The original intent was to target material, persistent and intentional behaviour.

The concern of NSW government funding being used for purposes other than for the operation of the school is the intention, and this is something PLC Sydney and, I believe, the wider sector supports. It is not uncommon in schools that such funding represents less than 15% of the school's total recurrent income. Indeed, many schools are in the order of 5%. Given schools operate on minimal surpluses it's evident that it would take significant and material behaviour to cause the actions the legislation was designed to prevent. We also note that NESAs are already regulating school operations and governance to ensure correct practices are upheld. With the department enforcing S83C separately, independent schools are subjected to two regulatory authorities for the same matters.

We encourage a thorough review of enforcement mechanisms to ensure that the proposed review can make the needed changes to uphold the spirit and purpose of the legislation. This may involve clarifying language, specifying expectations, adding materiality and strengthening guidance to prevent potential misinterpretations.

#### Lack of Materiality

The absence of materiality in the proposed guidelines and framework is a point of concern. We recommend incorporating explicit guidance on materiality to ensure a more consistent and meaningful evaluation of compliance. This will contribute to transparency and understanding of the significance of identified breaches or non-compliance.

It should also be considered when determining materiality that the funding an independent school may receive from the NSW government is only a small percentage compared to the fees paid by parents towards the operation of the school. Total NSW government funding does not cover the cost of teacher salaries in any independent school, let alone support staff and other resources needed to educate our young people.

Given this disparity, we believe it is a disproportionate response to include all income a school receives within the scope of 83C. Independent schools are already accountable to the ACNC as to their not-for-profit status and to NESAs for their governance and practice.

Given such a robust regulatory environment already exists outside of 83C, we encourage the scope of this legislation to consider only how those funds received from the NSW government are used towards the school's operations.

### **Subjective Nature of "Reasonableness" and the need for an Independent Regulator**

The subjective nature of the term "reasonableness" raises concerns in the implementation of the legislation. While we suggest providing more precise definitions or guidelines on what constitutes "reasonableness", we would also note that the inherent difficulty in doing so for the depth and complexity of a school's operations further highlights the issues within the current regulatory framework.

Given this complexity, whether an item of spending was required or reasonable is often difficult to ascertain, particularly when viewed retrospectively.

Additionally, exploring options to appoint an independent regulator (who accepts the purpose and autonomy of non-government schools) will enhance the credibility and fairness of assessments. NESAs could play such a role.

### **Disparity in Measures for Public Schools**

There is a perceived disparity in measures applied to non-government schools compared to the schools run by the department. We recommend conducting a comprehensive review to ensure that all educational institutions, regardless of their funding sources, are held to equivalent standards. This will contribute to a fair and equitable regulatory environment.

### **Clarity in Breach Statements**

Where a school is found to be in breach, it should be stated that the school has not complied or is in breach of the legislation instead of declaring them "for profit".

Unless the school breaches its ACNC obligations, the definition of 'for-profit' is incorrect and misleading to the public. Clear and unambiguous language will facilitate a better understanding of compliance status and contribute to a more effective regulatory process.

### **Right for independent schools to receive income from related activities**

School funding is a contentious issue, and many independent schools are receiving less recurrent funding support under the new funding models than might have otherwise been the case. This in turn increases the contributions parents need to make for the school to continue in its present form.

Schools generating income from their assets or expertise, even if incremental, benefits the overall operation of the school. If the proceeds are returned to the school for the benefit of its students, any such activity should be expressly permitted.

We appreciate the opportunity to provide feedback. We believe that an open dialogue and collaborative effort will result in a regulatory framework that is robust, fair, and aligns with the best interests of all stakeholders involved.

Thank you for considering our feedback, and we remain at your disposal for any further discussions on this matter.

Yours sincerely



Dr Paul Burgis  
Principal