



# SHORE

Blue Street North Sydney  
PO Box 1221  
North Sydney NSW 2059  
Telephone  
[www.shore.nsw.edu.au](http://www.shore.nsw.edu.au)  
ABN 60 352 822 184  
CRICOS 00772M

*From the Headmaster*

23 February 2024

Mr Tom Alegounarias

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

Dear Tom

## **Submission to the review of s83C of the Education Act 1990 (NSW)**

Sydney Church of England Grammar School supports this review and is very appreciative of the opportunity to provide feedback.

I confirm that the School is supportive of the intent of s83C as outlined in a speech to Parliament by the then Minister for Education, Mr Adrian Piccoli, that is to ensure that the significant financial investment in non-government schools is not directed to schools that operate for profit. He noted that “They build on the longstanding requirement that non-government schools in receipt of public funding do not operate for profit. The measures aim to strengthen the rules around this funding condition, making it harder for operators to run a school as a profit-making business or to divert school funds to other individuals or entities.”

Mr Piccoli also said that the amendments are “not about putting obstacles in the way of non-government schools, nor are they meant to constrain in any way a school’s right to meet the particular needs of its community. The amendments enable the Government to meet the legitimate public expectation that funding provided to educate school students is used for that purpose rather than improving an investor’s bottom line. The measures are not intended to disproportionately increase the regulatory burden for non-government schools.”

It seems that what was intended and what has been put into practice are not the same thing and consequently I raise the following matters:

1. Clause 2(a) of s83C refers to “**any** part of the proprietor’s assets...or income...is used for **any** purpose other than for the operation of the school”. The application of this legislation has resulted in an overreach, causing excessive scrutiny and limiting of legitimate educational activities and initiatives. The breadth of clause 2(a) enables the NSW Department of Education through the Not-for-Profit Guidelines to control many aspects of the operations of a non-government school that are not fundamental to legitimate public expectations about the use of government funding. This is creating a disproportionate regulatory burden, with much of the work done by non-government schools not directly relevant to the aims of the clause.
2. Clause 2(b) refers to “required for the operation of the school”. The test in clause 2(b) is open to an unreasonably narrow interpretation. This phrase creates difficulties as there are many legitimate ways to educate students, reflecting amongst other things different school values and pedagogies. As a result schools second guess what is meant by “required” and “operation” to ensure they are in line.
3. As the NSW Department of Education is in direct competition with non-government schools, it is inappropriate for the Department to have responsibility for the regulatory functions associated with the Act. There are perceived, potential and actual conflicts of interest that may arise.



4. Non-government schools are regularly caught between the application of s83C and the expectations of local community and local government, who wish to access school resources at lower than market rates. While not permitted under s83C, such access would be expected to create a broader community benefit, although not directly contributing to educating school students.

In summary, the review is a welcome opportunity to rewrite s83C as a test that better reflects the original intent of the clause and reduces the unnecessary regulatory burden on non-government schools.

Yours sincerely

**Dr John Collier**  
**Headmaster**