



83 C Review Terms of Reference Feedback

St Philip's Christian Education Foundation welcomes the review of Section 83C of the Act, and the opportunity to provide feedback on the terms of reference. Overall, the Minister's Terms of Reference for the review of section 83C of the Education Act 1990 (NSW) demonstrate a structured approach to evaluating the effectiveness and implementation of the legislation. However, there are several areas that could be strengthened to ensure a more comprehensive, independent, and fair review process:

Governance

In the Governance section of the Terms of Reference document, it mentions that NESAs will undertake a secretariat function in the review. This involvement in the review itself presents a number of potential, perceived, and real problems. NESAs' dual role as both a participant in the Not-for-profit Advisory Committee and a provider of secretariat support for the review creates a conflict of interest. This conflict arises because NESAs have a vested interest in the outcomes of the review, as it directly impacts the regulatory framework within which it operates and an assessment of its performance. The involvement of NESAs in the secretariat function may give the impression of bias or favoritism towards the perspectives and interests of the government and the state school sector. This perception could undermine the credibility and impartiality of the review process, particularly among stakeholders from the independent school sector. The review process requires a high degree of independence to ensure that its findings and recommendations are objective and unbiased. By relying on NESAs for secretariat support, there is a risk that the review's independence may be compromised, as NESAs' allegiance may lie more closely with its own interests. The involvement of NESAs in both the review process and the Not-for-profit Advisory Committee raises concerns about transparency. Stakeholders may question whether NESAs' role in the review process is fully disclosed and whether there are sufficient safeguards in place to prevent any undue influence or manipulation of the outcomes. In short, to address concerns regarding potential conflicts of interest and to ensure the independence and integrity of the review process, it is recommended that the Minister consider appointing an independent secretariat separate from NESAs to support the eminent person leading the review.



Minister's Terms of Reference

1. Regarding Terms of Reference point 1., we note the following:
 - In addition to evaluating the effectiveness and clarity of section 83C of the Act, the review should assess its alignment with the original intent, purpose, and goals envisioned when the legislation was introduced. This includes examining whether the current wording and application of the law accurately reflect its intended objectives and whether any discrepancies exist between the legislative language and its practical implementation.
 - Given the regulatory oversight exerted by other government agencies such as the Australian Taxation Office (ATO) and the Australian Charities and Not-for-profits Commission (ACNC) over non-government schools, the review should evaluate the competence and independence of the Department of Education in providing financial oversight under section 83C. This assessment should include an analysis of existing financial requirements and accountability measures already imposed on non-government schools by other government bodies, as well as an examination of the Department's capacity to effectively regulate within this complex financial regulatory landscape.

2. In response to the Terms of Reference point 2., in analyzing the role of the Advisory Committee, the review should explicitly delve into several key areas:
 - Effectiveness of Investigations and Audits: Assess the efficacy of investigations and audits conducted by the Advisory Committee in identifying instances of non-compliance with section 83C, including any challenges or limitations encountered in the process.
 - Independence and impartiality of the Not-for-profit Advisory Committee: Evaluate the independence of the committee, in particular, the role of the Department of Education, NESAs and the Association of Independent Schools, in its administrative oversight of non-government schools, particularly regarding its role in enforcing compliance with section 83C. This involves examining potential conflicts of interest, biases, or dependencies that may compromise the Department's impartiality and therefore its ability to support the Minister's objectives. Further assessment of the membership and



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requirements ought to be reviewed. For instance, it is currently a possibility that no Principal or someone with skin in the game be on the committee, removing crucial experience and perspective in both audits, findings, and recommendations.

- **Fairness and Representation in Judicial Process:** Review the fairness and transparency of the judicial process employed in evaluating breaches of section 83C, ensuring that schools subject to investigation receive equitable treatment and adequate representation throughout the proceedings.
- **Appropriateness of Consequences for Breaches:** Assess the appropriateness and proportionality of the consequences imposed on non-government schools found to be in breach of section 83C, considering factors such as the severity of the violation, mitigating circumstances, and the potential impact on students, staff, and the wider community.

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