
Minister's Terms of Reference:
Review of section 83C of the *Education Act 1990* (NSW)

Context

The non-government school sector is an important part of the education landscape in NSW. Each year, the sector educates around one-third of NSW school students, providing the diverse range of choices that parents and carers enjoy when considering the educational needs of their children.

Each year, the NSW Government provides approximately \$1.5 billion in financial support to non-government schools. The provision of that financial support is governed by the *Education Act 1990* (NSW) (the Act). Under the Act, it is a longstanding requirement that financial assistance not be paid to non-government schools operating for profit. This requirement was first introduced in 2006, then later strengthened in 2014 through the *Education Amendment (Not-for-profit Non-Government School Funding) Act 2014*, which introduced section 83C.

Section 83C(1) of the Act prohibits the Minister for Education and Early Learning (the Minister) from providing financial assistance to a non-government school that operates for profit.

Section 83C(2) of the Act identifies (without limitation) a number of specific circumstances in which non-government schools will operate for profit. For instance, a school will operate for profit if any part of its assets or income is used for a purpose other than the operation of the school. A school will also operate for profit if it makes a payment for property, goods or services, and that payment is at more than reasonable market value or is in any other way unreasonable in the circumstances, given the fact that financial assistance is provided to or for the benefit of the school. Further, a school will operate for profit if it makes any payment to a member of its governing body, unless it is in reimbursement for a payment made by the person in connection with the operation of the school.

Additionally, the regulations may specify further circumstances in which a non-government school will or will not operate for profit (section 83C(3) of the Act).

As it has been a number of years since the introduction of section 83C of the Act, it is now timely that the provision be reviewed.

The review will assist by providing:

- greater clarity to non-government schools that receive financial assistance from the NSW Government on the obligation to not operate for profit
- any process improvements
- strong oversight of government funding.

Purpose

The purpose of this review is to examine the operation of section 83C of the Act – within the context of Part 7 Division 3 - and make recommendations to the Minister for improvements.

Governance

The review is to be led by an eminent person appointed by the Minister. Secretariat support is to be provided by the NSW Education Standards Authority.

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1. Examine the effectiveness and wording of s.83C of the Act and the associated sections – in the context of the Part 7 Division 3 – to determine if there is sufficient clarity for:
 - a) the Minister to regulate financial assistance to non-government schools
 - b) non-government schools to comply with the legislation.
2. Examine the role of the Non-Government Schools Not-for-profit Advisory Committee established under s.83K, including its role and membership.
3. The examination of the operation of s.83C should also consider:
 - a) the outcomes and risk-based regulatory framework (exposure draft released)
 - b) the Minister's not-for-profit guidelines published under s.83L of the Act (exposure draft released)
 - c) other guidance material published on the department's website, including the Regulatory Topic Index.
4. Having regard to the above Terms of Reference, make recommendations to improve the regulation of financial assistance to non-government schools, including:
 - a) any suggested amendments to the legislation, including to the regulations, to bring about further clarity for non-government schools and the Minister
 - b) any suggested changes to regulatory practices in place for the regulation of financial assistance to non-government schools.

Consultation

The eminent person is to consult publicly and with key stakeholders. Key stakeholders to be engaged include (but are not limited to):

- Non-Government Schools Not-for-profit Advisory Committee
- Catholic Schools NSW

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- The Association of Independent Schools of NSW
 - NSW Independent Education Union
 - NSW Parents' Council
 - Council of Catholic School Parents
 - Non-government schools that receive financial assistance under Part 7 Division 3 of the Act
 - The NSW Department of Education
 - The NSW Education Standards Authority.

Methodology

The eminent person is to:

- Undertake stakeholder engagement with the above mentioned stakeholders
- Release for public consultation an issues paper to facilitate sector and community engagement
- Produce a final report with recommendations to the Minister by no later than end of June 2024.