

22 February 2024

Tom Alegounarias
Review Chair
Section 83 review

Via email: section83review@nesa.nsw.edu.au

Dear Mr Alegounarias

Catholic Schools NSW submission in response to review of section 83C of the Education Act 1990 (NSW)

Thank you for inviting Catholic Schools NSW (**CSNSW**) to provide a submission in response to the review of section 83C of the *Education Act 1990 (NSW)* (**the Act**).

CSNSW has consulted widely with our stakeholders and that consultation continues to support CSNSW's previous representations on the difficulties encountered by Catholic schools in the day-to-day application of the Act.

Specifically, there is overwhelming support within the Catholic sector for

1. the insertion of a materiality threshold into the legislation;
2. legislative recognition for systems of schools (not only individual schools);
3. consideration for the ability to pay fees to directors on school boards; and
4. legislative power for the Minister to possess a broader range of responses concerning breaches of section 83C, depending on the significance of the breach.

1. Materiality threshold

We would like to take this opportunity to reiterate our previous representations regarding the significant regulatory burden on the sector associated with recording all related party transactions as a result of a nil materiality threshold.

As you are aware, there are 11 registered proprietors operating 11 systems of Catholic schools in NSW. Each of these systems maintain a centralised office, typically referred to as the Catholic Schools' Office (**CSO**) which is responsible for the day-to-day operation of the Catholic schools in the Diocese in which the schools are located. In effect, the CSO carries out all the responsibilities of the registered proprietor. This includes

- i) developing and maintaining policies and procedures in compliance with the registration requirements for systems of schools;
- ii) providing IT support to all schools;
- iii) employing all staff necessary to the operations of the schools;
- iv) providing payroll services;
- v) workplace relations, including enterprise bargaining;
- vi) risk and compliance;
- vii) safeguarding;
- viii) curriculum development and support;
- ix) management of school capital projects;
- x) financial compliance.

In the case of one system alone, the lack of a materiality threshold means that 12,000 to 20,000 transactions are audited annually with a significant cost attaching to audit fees (in this specific case, the audit costs are \$1.6 million with an additional cost of 5 FTE).

CSNSW recognises the importance of the public policy underpinning the requirements for a nil materiality threshold. However, we consider that the public policy can be satisfied through a risk-based compliance method e.g. transactions of the same or similar nature are aggregated and only those above a materiality threshold are required to be audited annually.

CSNSW also considers that the recognition of systems of schools in the legislation may be helpful in the application of a materiality threshold.

2. Legislative recognition of systems of schools

Currently, the text of section 83C of the Act is directed to individual schools. This means there is no provision in the Act which reflects the reality that, in relation to many Catholic schools in NSW, there is a CSO which manages the operations of the school.

I draw your attention to the guidance on shared services in the Not-for-Profit Guidelines. In particular, the requirement that each school have both the right to opt out, and the responsibility to separately justify the school's continued participation in shared services offered by the CSO. If this requirement is accepted then it follows that each school must enter into a shared services agreement with the CSO. The effect of this is that it deprives the CSO of the benefit of scale and imposes an unacceptable additional compliance burden on schools and CSOs. This seems a perverse result and fails to recognise the significant

legislative requirements which the CSO must satisfy as the registered proprietor of the system of schools.

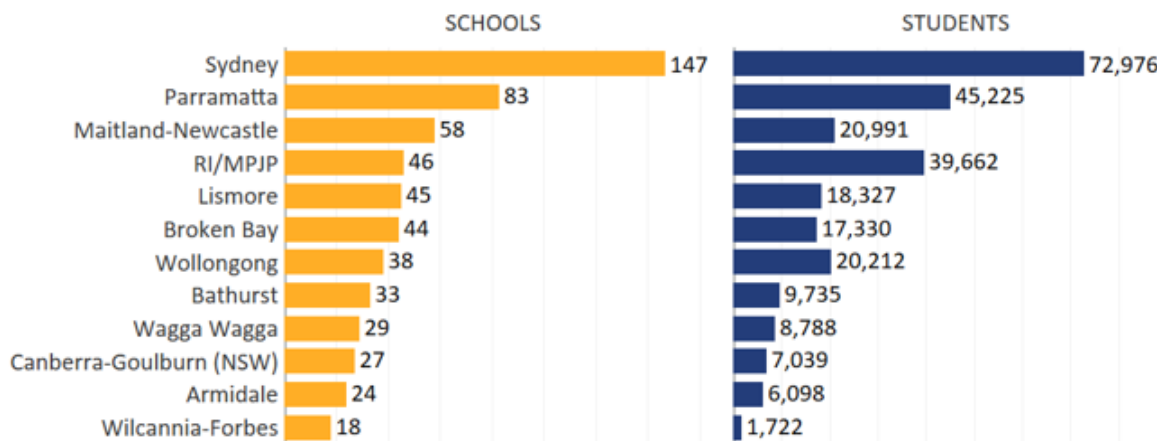
3. The ability to pay fees to directors on school boards

The registered proprietor of the 11 systems of Catholic schools in NSW are broken down as follows:

- i) Three are public companies limited by guarantee comprised of independent directors;
- ii) Eight are unincorporated entities which are the trustees of the Diocese in which the school is located.

In the short to medium term, three systems have indicated their intention to establish a public company limited by guarantee to become the registered proprietor with the result that over half of all systems will be governed by an independent board incorporated under the *Corporations Act 2001* (Cth).

As you can see from the following graph, the largest of the Catholic systems in NSW is responsible for the operation of 147 schools and almost 73,000 students.



Relevantly, it is a requirement of paragraph 5.9.3 of the Registered Systems and Member Non-government Schools (NSW) Manual, dated November 2022 (**RANGS Manual**), that a registered non-government school has appropriate policies and procedures for the proper governance of the school and responsible persons of the school (such as directors of school boards) are accountable for meeting this requirement.

In this context, the RANGS manual expects that

the requisite policies and procedures for proper governance must be consistent with properly accepted community norms for school governance. A number of widely accepted standards and authorities exist in this regard, such as the Australian Securities and Investments Commission (ASIC) and the Australian Securities Exchange.

Participating on a board which is the registered proprietor of a system of schools involves devoting a significant amount of time and skill. Good governance requires, and indeed most Constitutions provide, that there is an appropriate mix of skills present on each board such as legal, financial, education to name a few.

It is our contention that the level of skill required to participate as a board member for systems of schools requires suitably qualified professionals equivalent to a board member on a medium to large sized entity.

In remote and regional areas, it can be particularly difficult to find appropriately qualified individuals to sit on these Boards, clearly there is a case for an incentive structure to apply to board directors, and a need to revisit the prohibition against the payment of board directors.

Consistent with the public funding of non-government schools, we submit that an appropriate method of providing for remuneration of directors is not excessive or discretionary but may be made through a schedule of directors fees which is set at the same or similar level to those currently paid under the *Classification and Remuneration Framework for NSW Government Boards and Committees*.

4. Legislative power for the Minister to possess a broader range of responses concerning breaches of section 83C, depending on the significance of the breach.

There is strong support for inserting into the legislation more nuanced and clear Ministerial powers that are proportionate to the significance of the relevant breach. This will provide clarity for those charged with compliance, ensure consistency in the regulatory approach of the Minister and provide for schools to efficiently respond to minor matters and unintentional breaches.

Lastly, during the course of inviting submissions, CSNSW also found support for the following matters:

- a) that the Non-Government schools NFP Advisory Committee continue to provide advice to the Minister;



- b) that the Non-Government schools NFP Advisory Committee membership continues to include representatives from the Non-Government sector;
- c) that the Non-Government schools NFP Advisory Committee Chair remain independent of non-government schools and the Department of Education.

We thank you again for the opportunity to make this submission on behalf of Catholic schools in NSW.

Yours sincerely

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Audrey Bower

Chief Legal and Risk Officer

Catholic Schools NSW