



Ascham School

23 February 2024

Mr Tom Alegounarias
Chair
Review of Section 83C of the Education Act 1990 (NSW)

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

Dear Mr Alegounarias,

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

I am writing to you on behalf of Ascham School to provide feedback on the review of Section 83C of the Education Act 1990 (NSW), focusing on the Review's Terms of Reference.

Ascham School strongly supports the core intention of Section 83C of the Education Act 1990 (NSW) to ensure that schools in receipt of NSW financial assistance only apply that funding to the operation of the school, and not apply it to any other purpose.

Having stated this, and as an independent school, we are of the view that the Act as it stands would benefit from amendment, to address ambiguity of wording in the Current Act, the concept of 'For Profit', the Compliance Burden on Independent schools, and inherent conflict of interest in the NSW Department of Education taking on the role of Regulator for the entire school sector.

Our specific feedback is as follows:

- **Ambiguity of Wording in S83C of the Current Education Act**
 - Ambiguity of wording in the current Act results in a high level of concern as to whether a particular school practice, initiative or activity might be in breach of the Act. Independent schools face challenges in undertaking such diverse activities as hiring of school facilities to external groups (with ensuing benefits to the broader community), acquisition of land and property, ex-gratia payments to avoid industrial relations disputes, and payments for shared services.
 - Schools experience difficulty in interpreting two key propositions in the Act. All the school's income and assets must be:
 - 1) required for the operation of the school, and
 - 2) at reasonable market value.
 - The above concepts require a high level of interpretation and are also highly contextual.
 - We request that the Act is amended to remove the ambiguity in interpreting the above.

- **Concept of 'For Profit'**
 - The way 'for profit' is defined in the Education Act confuses the distinction between operating 'for' profit and operating 'at' a profit.
 - The Corporations Act and the ACNC place significant obligations on directors to ensure the school as an entity remains solvent, and demonstrated financial viability is also a NESAs requirement.
 - Under S83C of the Education Act, if a school applies any part of its income and assets to purposes other than the operation of the school, it can be deemed to operate 'for profit' and therefore be in breach of S83C.
 - The above definitions create ambiguity around activities that school employees might undertake to support important ancillary activities that also benefit students, including administrative support for the school parents association or Alumni association, or activities that support the broader community around the school.
 - Ascham school supports an alternative approach wherein the Regulator develops a mechanism whereby schools can demonstrate that all recurrent funding, both state and commonwealth, is applied to school staff salaries, which are an unambiguous and market value determinant of school operations.

- **Compliance Burden on Independent Schools**
 - Non-government schools are already highly accountable to their parents and school spending is subject to financial regulation and scrutiny by multiple Federal and State Government agencies including NESAs, ACARA, the ACNC, ASIC and the Federal and State Departments of Education.
 - S83C audits appear to have grown beyond their originally intended scope. Review of the legislation needs to address this issue to ensure that scope of audits clearly reflect the original intent and purpose of the Act.
 - Clearer guidelines and boundaries for audits would provide additional clarity and assurance, ensuring non-government schools continue to operate with transparency and accountability.

- **Conflict of Interest for Current Regulator (NSW Department of Education)**
 - Currently, the NSW Department of Education serves as both as regulator and competitor to Non-Government Independent Schools.
 - We advocate for the establishment of an independent regulator as they would understand and acknowledge the distinct purpose and autonomy of non-government schools while maintaining regulatory impartiality.
 - We propose that NESAs assume the role of regulator, given their existing management of the NSW School Registration process and their institutional independence.

Thank you for your consideration of our views in relation to this important legislation, and how it impacts our school, as well as our ideas on opportunities to improve and clarify the legislation.

Yours sincerely,

Andrew Powell
Head of School