

## Welcome to Term 3

The Non-Government Schools Not-For-Profit Advisory Committee advises the NSW Minister for Education on emerging issues regarding schools' compliance with not-for-profit legislation under the [NSW Education Act 1990](#) (the Act). The Advisory Committee also assists the Minister in creating and publishing Not-For-Profit Guidelines for Non-Government Schools. These Guidelines are reviewed regularly to ensure information is up-to-date and reflective of the emerging trends, and to provide information on issues schools are experiencing. This newsletter highlights the key additions and changes in the current version. It is important that all non-government schools are aware of these changes and their responsibilities under Section 83C of the Act. We recommend that all boards, senior business managers and auditors review the requirements of section 83C.

## Updated 2019 Guidelines

The Advisory Committee has recently amended the [Not-For-Profit Guidelines for Non-Government Schools \(2019\)](#) to reflect the role of non-government schools in the wider community and in the NSW Education Sector as a whole. These changes respond to queries about schools using their income to support onsite ancillary services or community use of school assets, and whether these were a breach of section 83C. In sections 9.1 (shared use) and 9.2 (ancillary services), the updated Guidelines now clarify how schools can provide these services and share their assets in a compliant way.

## Shared and Community Use of School Facilities (Section 9.1)

Schools are encouraged to make their facilities available for use by the wider community when not required by the school. This is to ensure that the Government's investment in schools also enhances the communities that they are located in, and contributes to the development and support of those communities. This can include use of sporting facilities, school halls, classrooms, playgrounds and conference centres. Existing school assets can be made available to community groups through shared use arrangements. Schools can also enter 'joint use'

arrangements to jointly plan, fund, build and use school or non-school facilities with another party (or parties) for mutual benefit. These arrangements are regarded as part of the broader operation of the school and will be compliant with section 83C, where the following principles are followed:

- assets should only be made available for shared or joint use when they are not required by the school;
- shared or joint use of assets must not detrimentally affect or obstruct the usual activities of the school;
- shared or joint use of assets must not cause the proprietor or school to incur a material liability;
- the income of a proprietor or school must not be used to subsidise a commercial (for profit) use of a proprietor's or school's assets;
- any shared or joint use of assets for a commercial (for profit) purpose must be at least reasonable market value; and,
- any shared or joint use of assets must be lawful and meet all relevant requirements (e.g. workplace health and safety, child protection, student and staff welfare).

### Case Study 1

An ex-student of a school wishes to use the school's chapel for their wedding. The wedding takes place on a weekend during the school holidays. Some maintenance staff are required to clean up after the event, and the school covers the small maintenance and clean-up costs. This would be compliant as the costs are not material, the ex-student is not using the school's chapel to make a profit and its use does not interfere with the normal operation of the school. It is also likely that the ex-student may have made a contribution to the school to support these costs.

### Case Study 2

School A has an art gallery on its grounds, which exhibits the work of its students and local community artists. This gallery is open to the community with no admission fee. School A's shared use arrangement would be compliant with section 83C as it allows the use of its assets by members of the community (i.e. not a commercial user).

### Case Study 3

School B has a drama theatre, which is used by both its students and a commercial theatre company. The commercial theatre company is charged a hire fee well below reasonable market value. School B's arrangement would be non-compliant as the use is by a commercial provider and the school is not charging reasonable market value.

### Case Study 4

A school owns a property in rural NSW which it uses for Duke of Edinburgh hikes and school camps. It leases the property to other schools and community groups for them to undertake similar activities, and charges them a small fee at cost to cover the expenses of maintaining the property. This would be compliant as the school does not incur a material liability and the income (hiring fee) the school receives from the sharing arrangements is directed to the school.

## Onsite Ancillary Services (Section 9.2)

Many schools (or their proprietors) provide ancillary services that operate from the school site for students, their parents and carers, and staff. These services include childcare, long day care, preschool, vacation care and Out of School Care (OOSC). The provision of ancillary services by proprietors and schools is important for students and their families. Section 83C is principally aimed at preventing the diversion of school income for the gain of an individual or related entity, and to ensure school income is spent on the students, their educational objectives and operational requirements of the school. Proprietors and schools may provide onsite ancillary services where the following principles are followed:

- for commercial (for profit) providers of ancillary services:
  - no proprietor or school income is used to pay for the provision of ancillary services; and,
  - any use of a proprietor's or school's assets for the provision of ancillary services must be shown to be at reasonable market value.
- for not-for-profit providers of ancillary services:
  - no proprietor or school income is used to pay for the provision of ancillary services unless the provider of ancillary services directs their assets (surplus funds) back to the proprietor or school; and,
  - any use of a proprietor's or school's assets for the provision of ancillary services must not cause the proprietor or school to incur a material liability.

As always, transactions must be transparent and consistent with the intent of the Act. All relevant legal, regulatory and policy requirements (such as child protection and the safety and welfare of students and staff) must be met.

### Case Study 5

A school sets up a preschool to help children transition from early learning to schooling and to increase enrolments in the longer term. The preschool is on the existing school site, in buildings owned by the school. The school employs the preschool staff and is responsible for all employment policies and practices.

The school and preschool are not separate legal entities and share the same proprietor. To be compliant with section 83C and ensure that the school does not incur a material liability, the school must keep appropriate financial records for the preschool to identify its revenue and expenditure. This would include appropriate records regarding market value for transactions as per the Guidelines.

### Case Study 6

After running a long day care centre for a few years, a school feels the administrative burden is too great and decides to lease the centre to an established commercial early learning provider. To be compliant with section 83C, the school must receive reasonable market value for its assets and appropriate records must document the lease of the long day care centre. As the school/proprietor still own the site on which the long day care centre operates and the new provider pays the school reasonable market value for use of its facilities and any utilities, this is compliant with section 83C.

### Case Study 7

During school holidays, a school runs sporting camps from its tennis courts and rugby ovals using their staff. These camps are attended by both students of the school and students from other schools. As the school keeps appropriate financial records and does not incur any material liability from including students from other schools, this is compliant with section 83C.

## Case Study 8

A school decides to set up an out of school care (OOSC) for children from the school. It puts out a tender for these services, and a relative of the principal (with experience in OOSC) puts in a bid to operate the service through their own company. As the relative is a related entity, the school mitigates the conflict by removing the principal from the decision-making process and evaluating the relative's proposal against the other submissions received in the open tender process. The relative has the best offer for the school, and the school decides to set up the OOSC with the relative's company.

Throughout this process, the school retains records that demonstrate the best price and service for the OOSC. It can also show that these transactions were transparent, and any conflicts were recorded and mitigated. No school income is used to pay for the provision of these ancillary services, and, as the correct procedures were followed for a related entity transaction, this arrangement is compliant with section 83C.

(Refer to section 9.3 of the Guidelines for guidance on leasing school-owned assets.)

## Further Information and References

If you would like to receive notification of newsletters and advice as they are published please email relevant contact details (name/position and email address) to [NGS-Compliance@det.nsw.edu.au](mailto:NGS-Compliance@det.nsw.edu.au) and we will add you to our newsletter & updates distribution list. We encourage you to share this information with senior staff, financial administrators, diocese representatives, board members and auditors. For further information about this communication or the requirements of Part 7, Division 3 of the Act, schools should contact the External Relations Policy Directorate in the NSW Department of Education by email at [NGS-Compliance@det.nsw.edu.au](mailto:NGS-Compliance@det.nsw.edu.au).

The 2019 [Not-For-Profit Guidelines for Non-Government Schools](#) apply to all registered non-government schools in NSW that receive funding from the NSW Government. They contain information to assist schools understand the not-for-profit funding requirements established by Part 7, Division 3 of the Act.

Further information on governance standards or any other school registration requirements for non-government schools can be obtained from [NSW Educational Standards Authority](#).

A copy of the Education Act 1990 (NSW) can be accessed at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

A copy of the Australian Education Act 2013 (Cth) can be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

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