

Welcome to Term 2 2019

The Non-Government Schools Not-For-Profit Advisory Committee congratulates all schools engaged in the successful education of NSW students and looks forward to working with schools throughout 2019.

Revised Non-Government Schools Not-For-Profit Guidelines

At the end of 2018 revised [Not-For-Profit Guidelines](#) were published. It is recommended that all boards, senior and business managers, and auditors review the requirements of section 83C.

Related Entity Transactions

All Non-Government Schools who receive government funding are required to operate within Part 7, Division 3 regulations as set out in the [NSW Education Act 1990](#) which relates to the use of all school income and assets. Newsletters aim to clarify compliance issues for schools, boards and auditors.

Section 83C(2)(b)

Under this section, a school or proprietor may be found to be operating for profit if any payment is made to a related entity for property, goods or services that are more than reasonable market value.

Who is a Related Entity?

The term "related entity" is not defined in the Act but is defined in the Guidelines. It means a person or a legal entity that is related to a proprietor or school (or 'Responsible Person') either as a result of office, membership, management, control or influence or a personal/ familial relationship.

A Responsible Person (as defined under s.3 of the Act) is a:

- (a) proprietor of the school and, if the proprietor is a corporation, each director or person concerned in the management of the school, or
- (b) member of the governing body of the school, or
- (c) principal of the school.

For schools and proprietors, the following types of people, entities and organisations are usually considered to be related entities when they have relationships with a Responsible Person or Persons:

- members of the school's senior management team, and members of their family;
- employees of the school; and
- other organisations or corporations controlled by the people mentioned above.

Related Entity Transactions

A related entity transaction is a transaction through which a person acting on behalf of the school provides a financial or other benefit to a related entity. This may include a cash payment or in-kind benefit to a related entity in connection with the supply of property, goods or services for the school.

Related entity transactions pose a compliance risk if the school cannot demonstrate that the transaction was at market value or was not at 'arms-length'. The intent of section 83C(2)(b) was to prevent related-entities from receiving unfair payments at the expense of educational funding provided for the benefit of students.

What records and policies should schools have regarding Related Entity Transactions?

To ensure that related entity transactions are compliant with the Act, schools and proprietors should maintain the following type of business records:

- up-to-date related entity transaction policy and centralised register (all related entity transactions for the school and/or proprietor in one register) with transaction information (related entity name, amount, date and description of goods or services);
- proper recording of related-entity transactions in business/financial accounts;
- clear recording of Board minutes/approvals of the related entity transaction;
- a 'Conflict of Interest' policy;
- a policy dealing with fraud and corruption (including reporting such incidences); and,

- a process clearly defined within the purchasing/recruitment/related entity transactions policy detailing how market value can be shown in relation to employing/contracting a related entity and appropriate delegations and segregation of duties set and adhered to.

Information on good procurement practice is contained in [Newsletter Term 3, 2018](#).

Case Study 1

A school is seeking legal advice regarding staff employment. A board member contacts his son, who works at a law firm in Sydney CBD, to provide this legal advice. Two (2) other quotes are commissioned to confirm reasonable value for money is being achieved in using the son's firm and these quotes are kept on file. The agreement is made in writing and is reasonable market value. This related entity transaction is **consistent** with section 83C.

Case Study 2

The sister of a current employee of a school applies for an advertised position at the school. The position was advertised on the school's website, in the local newspaper and through various job seeking platforms. The sister and three (3) other people were interviewed for the position. The current employee discloses their conflict of interest, and does not take part in the recruitment process. Records of the merit based selection process are recorded and kept. The sister is employed based on her skills and experience and is awarded a salary that is at market value. This related entity transaction is **consistent** with section 83C.

Case Study 3

A proprietor provides shared services to all of its schools, large and small, remote and regional. The proprietor charges each school for these services and this enables the group of schools to support the smaller schools within the group. The proprietor provides these centralised and shared services at reasonable market value for the whole group and regularly tests the market to confirm this. Schools also understand and have information on the services provided and costs charged to them through this centralised service. This transaction is **consistent** with section 83C as the proprietor has documentation that the services are at reasonable market value across the

group of schools and that the schools understand and have records of what is included in this service.

Further Information and References

If you would like to receive notification of newsletters and advice as they are published please email all relevant contact details (name/position and email address) to 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 newsletter 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 on (02) 7814 1229 or by email at NGS-Compliance@det.nsw.edu.au. If you would like to suggest future issues or articles to be covered please also contact us by email.

The updated 2018 [Not-For-Profit Guidelines for Non-Government Schools](#) contain information to assist registered non-government schools in receipt of NSW Government funding to understand the not-for-profit funding requirements established by [Part 7, Division 3 of the Act](#).

Further information on the governance standards or any other school registration requirements for non-government schools, can be obtained from **NSW Educational Standards Authority on (02) 9367 8111**.

A copy of the Education Act, 1990 (NSW) can be accessed at www.legislation.nsw.gov.au.

A copy of the Australia Education Act, 2013 (Cth) can be accessed at www.legislation.gov.au.

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