

## Welcome to Term 3 2020

From bushfires to COVID19, the Non-Government Schools Not-For-Profit Advisory Committee (Advisory Committee) recognises that the year so far has seen significant challenges for NSW non-government schools. The Advisory Committee wishes to acknowledge the tremendous effort schools have made in addressing these challenges, moving from classroom-based learning to online home schooling then making a staged transition back to the classroom and to full time campus operation.

This newsletter responds to questions raised from schools about shared service agreements in non-government schools. It is important to make sure these agreements, especially those with related parties e.g diocese and proprietors, are properly documented, shown to be at no more than reasonable market value, required for the operation of the school and reflect the actual services delivered to the school.

## What are shared service agreements

Shared service agreements are agreements that schools may enter into for the provision of operational or corporate style services that schools often require to run effectively. This is different from the shared use of school assets and facilities, such as sporting facilities, school halls, classrooms, playgrounds and performance venues, by other schools or sectors of the community.

Services for shared service agreements can include:

- Educational consultancy services;
- Information technology support services;
- Business management, financial reporting, accounting and payroll services;
- Property maintenance e.g. (cleaning, maintenance etc) or property development (architectural or construction advice) services;
- Marketing;
- Administrative support and travel coordination services; and/or
- Human Resources (recruitment, training etc).

Effective shared service agreements assist to:

- Ensure all parties meet their obligations;
- Ensure all deliverables are provided to a certain standard and within required timeframes;
- Provide value for money;
- Achieve all specified outcomes; and
- Reduce administrative burden.

Typically, a shared service agreement requires a school to pay a management or service fee for services delivered under the agreement.

## Can schools enter into shared service agreements?

Yes, but schools need to be mindful of the not-for-profit requirements of the NSW Education Act 1990 (Act), specifically Part 7 Division 3, Section 83C which outlines that any payment for goods or services must:

- **not** be more than reasonable market value;
- be **required** for the operation of the school; and
- be **reasonable** in the context that the school is receiving government financial assistance.

The Advisory Committee recognises there are benefits to schools (particularly small schools or schools in systems) in having shared service agreements, which may deliver economies of scale, value for money, access to appropriately trained and qualified staff while reducing administrative burden.

It is important that school boards and principals ensure that any shared services agreements:

- Are in the best interests of the school;
- Are flexible to ensure that schools only pay for services required;
- Have options for the school to opt in or out of the provision of services (without penalty) according to changing needs and provide schools with option to review and negotiate future services;
- Are well documented and clearly identify services delivered and costs;

- Include a provision for itemised billing for each school participating in the shared service offering (costs charged to the school must be approved at a school level) ;
- Where services are shared with non-school organisations (such as early childhood centres, aged facilities, other community based programs and services) clearly demonstrate that the school is not cross subsidising any of these organisations; and
- Include services that are provided at no more than reasonable market value.

Service providers should regularly undertake market testing to assure the school that the contract and services offered are at reasonable market value. Ultimately the school is responsible to ensure it does not pay above market value for the services provided.

Any agreement with a related party/proprietor require board consideration and approval with decisions to enter into an agreement properly recorded in board minutes.

## Questions to consider for shared services agreements

Before entering or renegotiating a shared service agreement, schools and boards should consider the following questions:

1. What services will be provided to the school and does the school consider these are necessary for the operation of the school?
2. Will the school be able to use all the services detailed in the agreement?
3. Does the agreement provide flexibility for the school to choose what services it gets?
4. What opportunity does the school have to negotiate the details in the agreement?
5. Does the agreement sufficiently detail the costs charged (establishment and lifecycle) including the basis and detail for the service charges?
6. Will the school pay for only actual services used or pay an annual standard fee or service subscription?
7. Are there any clauses in the agreement where the school may be liable for additional costs and are these reasonable?
8. The school has either undertaken or sighted evidence that the services offered have been independently market tested and will be regularly market tested.
9. Can the school demonstrate that the purchase of the services are at no more than reasonable market value?
10. Can the school cancel the agreement and provide its own service or go to another external provider if it so chooses?

### Case Study 1

School A belongs to a group of schools (Alpha Group). Alpha Group has approached School A asking if the school would like to enter into a shared services agreement. School A is provided a template agreement from which it chooses the services that are relevant to its school. Alpha Group provides School A with the documentation for independent market based testing of all the services provided in the agreement. The agreement terms are reviewed annually and include a renewal option for the participating schools.

This agreement is likely to be **consistent** with section 83C as the school has been provided with opportunity to tailor the agreement that best meets the needs of the school and has kept evidence that the services provided are at market value.

### Case Study 2

The head office of a Beta Group of schools processes invoices, payroll, and budgets for all the schools. Each school must enter into management services agreement to join the Beta Group but has no power to negotiate the services it receives and costs for which it is invoiced. The schools do not receive any details on services provided to the school, so is unable to test market value by getting independent quotes on comparative services. Beta Group head office insists the service is best for the schools and saves schools money but does not provide evidence of this to the schools. The costs are charged to the school accounts by head office and can be changed without notice.

This arrangement is **not consistent** with section 83C, as the individual schools have no documentation on services received, the costs charged for services and cannot test or negotiate market value.

### Case Study 3

A system of schools, through a head office is invoiced for the following services: business management, financial reporting, accounting and payroll. Each school is provided with sufficient detail on services provided and the cost to be able to regularly market test (through quotes and market reports). At the end of the year, costs are invoiced on a pro rata basis, as agreed by the schools. The head office who invoice the schools cannot vary the agreed pro-rata cost without agreement from the schools. The services agreement is negotiated with the schools and has a no-penalty opt-out option. Schools are able to determine that the pro-rata cost and quality of these services through a shared arrangement is less than the cost to the school if it arranged its own services.

This arrangement is **consistent** with section 83C, as the school has documentation on services received and can show that the pro rata arrangement has been market tested and is cost effective.

### Case Study 4

School C joins a community of schools and is required to sign a service agreement to join. The agreement details the fixed services offered and there is a fixed annual fee payable. School C notes that some of the services are not relevant to their school. There are also other clauses in the agreement where additional fees may be charged that are unclear and do not appear to be directly related to the services being provided to the school. This agreement is **not consistent** with section 83C as the services in the agreement terms are not necessarily required for the operation of the school and no evidence is provided for the market value of the services.

## 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](mailto:NGS-Compliance@det.nsw.edu.au) and you will be added to the 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](mailto: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 school registration requirements for non-government schools including related governance requirements can be obtained from **NSW Education Standards Authority on (02) 9367 8111**.

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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