



AUSTRALIAN  
ASSOCIATION  
OF CHRISTIAN  
SCHOOLS



22 February 2024

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

Via email: [section83review@nesa.nsw.edu.au](mailto:section83review@nesa.nsw.edu.au)

Dear Mr Alegounarias

### ***Review of Section 83C of the Education Act 1990 (NSW)***

We appreciated meeting with you last year to provide direct feedback on behalf of our member schools and are also grateful for the opportunity to provide a submission in relation to the *Review of Section 83C of the Education Act 1990 (NSW)*.

Christian Schools Australia (CSA) and the Australian Association of Christian Schools (AACS) represent over 250 Christian Schools across the country, including **83 member schools educating over 35,000 students in New South Wales**. Our schools operate as independent, locally governed, religious organisations. Some are closely aligned with local churches, while others have their heritage in a group of parents coming together to start a school.

Our organisations and member schools strongly support accountability to ensure that government funding for schools is spent on the provision of education by that school. We are concerned, however, that in the application of the current legislation, school funding and resources that would be otherwise spent on the provision of education has to be diverted to meeting onerous, cumbersome and, in many cases, unnecessary accountability measures.

### **Background and Context**

The Minister's Terms of Reference rightly point to the long-standing nature of the current requirements, introduced in 2006 and strengthened in 2014 by the *Education Amendment (Not-for-profit Non-Government School Funding) Act 2014*.

The then Education Minister, Adrian Piccoli, indicated the Government 'will not countenance individuals enriching themselves at the expense of students' and we agree. He also made very clear in the Second Reading speech that the legislation was **NOT**:

- 'about putting obstacles in the way of non-government schools',

- intended to ‘constrain in any way a school’s right to meet the particular needs of its community’,
- ‘a licence for unnecessary interference in a school’s operations’, or
- aimed to ‘restrict the capacity of non-government schools to meet the needs and expectations of their communities, and to follow their particular mission or ethos’.

He further indicated that the Government ‘respects the autonomy of the non-Government school sector and has no intention of undermining that autonomy’.

These important principles **should form the basis for the review currently being undertaken**.

In discussing the operation of the legislation, the Minister indicated that in assessing whether a school has complied with the requirements ‘the key test is that the payment is for the school and not for the benefit of another individual or entity’. He also provided repeated assurances that the Government would not take a ‘heavy-handed’ approach, noting that for-profit declarations ‘are reserved for serious infringements’.

The experience of some non-Government schools indicates that this has not been the case in practice and the original intention of the legislation has been either forgotten or ignored in its application.

### **Principles and Objects of the Act**

It is also important to recognise the principles and objects of the *Education Act 1990* (NSW) (“the Act”) when considering the requirements of section 83C.

Section 4(c) is unambiguous ‘the education of a child is primarily the responsibility of the child’s parents’. This requires the recognition and support of the right of parents to choose a suitable school for their sons and daughters, including the choice of a faith-based school. Implicit in this is the right to provide an education that is consistent with the holistic and encompassing nature of many faiths.

Section 6 then outlines the objects for administration of the Act, incorporating a broad and encompassing view, including explicitly ‘encouraging innovation and diversity within and among schools’ in sub-section 6(1)(c).

It is also important to note that all jurisdictions across Australia, including New South Wales, are signatories to the Alice Springs (Mparntwe) Declaration,<sup>1</sup> which asserts in its Preamble:

*“Education plays a vital role in promoting the intellectual, physical, social, emotional, moral, spiritual and aesthetic development and wellbeing of young Australians, and in ensuring the nation’s ongoing economic prosperity and social cohesion.”*

Christian schools take seriously their responsibility to ensure the provision of education encompasses their students’ **spiritual, moral, emotional and aesthetic development** alongside the more commonly stated domains of intellectual, physical and social. This is in keeping with the needs and expectations of their parent communities who have made a deliberate choice to seek a genuine Christian education experience for their children, consistent with their school’s stated mission.

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<sup>1</sup> Education Council, *Alice Springs (Mparntwe) Education Declaration* (December 2019) Education Council <[http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/Publications/Alice%20Springs%20Declaration/Alice%20Springs%20\(Mparntwe\)%20Education%20Declaration%20\(accessible\).pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/Publications/Alice%20Springs%20Declaration/Alice%20Springs%20(Mparntwe)%20Education%20Declaration%20(accessible).pdf)>.

## Legislative Provisions

The language of section 83C of the Act is also instructive. Sub-section (2)(a) provides, emphasis added, that ‘any part of its proprietor’s assets **(in so far as they relate to the school)** or its proprietor’s income **(in so far as it arises from the operation of the school)** is used for any purpose other than for the operation of the school’ clearly:

- recognises that a school proprietor may have assets and income that are unrelated to the school, and
- acknowledges that those assets and income fall outside the scope of the legislation.

Sub-section 2(b) then limits the application of the tests therein to ‘any payment made **by the school**’, takes of ‘any payment’ made ‘**by the school**’, once again providing a clear boundary around the school under the legislation. The same scope applies under sub-section 2(c) in relation to payments to school boards.

This, in effect, provides a threshold requirement in the application of section 83C, the income, assets or payments under consideration must be arising from or related to the school. The legal entity operating a school may have other assets, receive other income and make other payments which are not connected to the school, and thus outside the scope of the legislation.

## Reframing Section 83C

Cognisant of the preceding observations, we submit that the legislation aiming to ensure that financial assistance to non-government schools is not misused, the regulations supporting that legislation and the regulatory practices that enforce the requirements must:

- support the right of parents to choose a school that provides a holistic form of education, including one with a faith basis,
- aid non-government schools to ‘meet the needs and expectations of their communities, and to follow their particular mission or ethos’,
- encourage ‘innovation and diversity within and among schools’,
- recognise that school proprietors may also undertake activities outside the scope of the Act,
- avoid a ‘heavy-handed’ approach, with the resulting divergence of resources away from the provision of education to meeting the compliance burden, and
- ensure that regulatory responses are proportionate and graduated, and that for-profit declarations ‘are reserved for serious infringements’.

As we discussed with you in our consultation meeting, and reflected in previous submissions to the earlier review on the proposed Regulatory Framework and Not for Profit Guidelines, the concerns of our member schools are largely focussed on the regulatory practices. However, the Review might also consider recommending legislative amendments which may ‘signal’ the need to adjust the regulatory practices. For example, legislative change to establish a separate regulator of these requirements, dedicated and focussed on understanding the nature and needs of non-government schools might be considered. Alternatively, this might be able to be accomplished by the incorporation of the responsibility for this area within the NSW Education Standards Authority.

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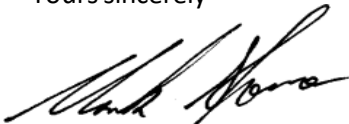
Whether achieved by legislative change or otherwise, a significant reduction in the compliance burden imposed by the current requirements could be achieved by overturning the presumption of 'bad faith' that permeates the current regulatory practices. A refreshed responsible regulatory body may assist with this.

Along the same lines, possibly by regulation, a rebuttable presumption that arms-length transactions are compliant with the legislation would significantly lift the compliance impost on schools. It would also allow regulatory resources to be focussed on, prima facie, higher risk related party transactions.

Christian schools support the Government's need to ensure that that government funding for schools is spent on the provision of education by that school. In that same vein, however, we desire to ensure that the funds received can be spent on the provision of high-quality education, with as little as necessary spent on poorly targeted compliance.

We encourage the Review to consider the concerns raised above and make recommendations to the Government accordingly.

Yours sincerely



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