

## Monetary Loans, Donations, Use of School Income, Good Procurement Practices and P&F Associations

### Relevant Legislation

The provision of financial assistance to non-government schools in NSW is governed by the not-for-profit requirements of the Education Act 1990 (NSW) (the Act)<sup>1</sup>. It is a fundamental condition that NSW government funding must not be provided to benefit a school that operates for profit.

Under section 83C of the Act, a school is considered to operate for profit if:

- any part of the school's assets or income is used for any purpose other than the operation of the school or,
- any payments is made by the school to a related entity, other person or body for property, goods or services;
  - are above a reasonable market value;
  - are not required for the operation of the school;
  - if such payments could be considered unreasonable in the context of the school receiving financial assistance from the government.
- the school makes payment to a person who is a member of the governing body of the school that is not a reimbursement of expenses paid by that person in connection with the operation of the school.

#### Operating for Profit and Non-compliance

Schools that don't comply with section 83C of the Act could be declared to be operating for profit or non-compliant. This may lead to the following sanctions in relation to government financial assistance:

- termination or suspension of funding;
- reduction in the amount of funding;
- the imposition of conditions on funding; or,
- the recovery of any previous funding provided to the school.

#### What is Income?

For the purposes of the Act, income may include, but is not limited to:

- school fees;
- money received from Commonwealth or State government grants or assistance programs;
- fees gained from the use of a school's assets;
- donations that are received for the operation of the school;
- income received from investments.

Income does not include:

- money held in trust for another entity i.e. third party transaction where a school may be holding funds for a P&F Association or book club;
- donations received for a specified purpose that do not include the operation of the school. i.e. clearly articulated request for donations to a specified charity.

### Monetary Loans

#### When can a school loan money?

Schools are not funded to provide loans to individuals or organisations. Loans are a matter for banks and financial institutions and not for schools to provide such a service.

Loans from a school to another school, non-school entity or a third party will generally not comply with the Act because financial assistance provided by the NSW Government is for the education of non-government school children not the commercial operations of a proprietor. For this reason such loans are unlikely to be for the operation of the school lending the money; or, they are likely to be considered as unreasonable in the context of the school receiving government assistance.

#### Loans to Individuals or Strata Corporations

Schools should note that the loaning money to an individual employee or a strata corporation would be considered a consumer loan under the provisions of the National Consumer Credit Protection Act 2009 (Cth) and would be subject to the requirement to hold an Australian Credit Licence (ACL). It is unlikely that such loans would be compliant with section 83C.



<sup>1</sup>Part 7, Division 3 of the Education Act 1990



### Case Studies

The following case studies provide scenarios which highlight the difference between:

- loans which are not consistent with the not-for-profit provisions of the act; and
- ventures and joint funding opportunities which can be consistent with the not-for-profit provisions of the act.

#### Case Study 1

School A enters into an agreement with School B to jointly fund the construction of a building or facility on School B's premises. School A receives a written agreement from School B for a long term right to use the building or facility and School A lends the funds to School B to undertake the construction. The use rights received by School A have a reasonable market value to School A that reflects the amount and term of the loan. All recorded actions, decisions and documents are available for audit purposes. Such a loan and the agreement is consistent with section 83C.



#### Case Study 3

School A lends funds to School B at an interest rate that is significantly below the interest rate that would be received from depositing the funds with School A's usual financial institution. The loan is not consistent with section 83C.

## Donations

A school may make donations to third-parties provided that the donations do not contravene the requirements of section 83C of the Act.

In particular, donations should not be raised from a school's normal sources of income, use of assets, or paid by the school to a third-party for any purpose, as these are not required for the operation of the school.

#### When can donations be made?

Schools should ensure that any fundraising activities undertaken by the school, or by groups associated with the school, are conducted in a manner that demonstrates that:

- funds have been collected and donated in a manner that is transparent, and which clearly identifies the beneficiary and the charitable purpose of the donation;
- funds have not been raised from the school's normal sources of income; and
- financial records characterise the receipt and payment of donations as third-party transactions and Annual Financial Statements note the receipt and payment of these third-party transactions.

## Community Fundraising Activities

Provided that schools have adequate procedures and documentation in place to demonstrate their compliance with section 83C, they may be involved in fundraising activities for local community charities and causes.

### Case Study 5

After completing a curriculum based project in geography, Year 9 students gain approval to undertake a charity fundraiser to raise money for a girls education charity in Fiji. As this can be seen as fostering social and moral development as well as a connection to the curriculum being taught school assets can be used to support the venture. The school accounts for the fundraising as a third party transaction on behalf of the students. This fundraising activity is consistent with section 83C.

## P&F Associations

P&F Associations are generally structured in one of the following ways:

- Separate legal entity - as incorporated associations under the NSW Associations Incorporation Act 2009.
- Not a separate legal entity - as a volunteer group of parents under the governance structure of the school.

The potential application of not-for-profit requirements to P&F Associations or groups of parents or other bodies, is based upon their legal status.

### SUMMARY

P&F Structures	Legal Status	Not-for-Profit Application
P&F Associations structured as incorporated associations under the NSW Associations Incorporation Act 2009.	Separate Legal Entity	Funds raised by a separate legal entity to the school may be outside the legislative requirements of Division 3, Section 83 of the NSW Education Act 1990, so long as those funds are not paid to the school.  Funds raised and paid to a school become an asset of the school and as such are subject to the requirements of the Act.
Groups of volunteer parents and friends established as notional not-for-profit sub entity of a school.	The group of parents and friends do not have a separate legal entity from the school.	Funds raised by volunteer parents and friends as a sub-entity of the school are within the requirements of Division 3, Section 83 of the NSW Education Act 1990. The funds are subject to all the requirements contained within the not-for-profit provisions of the Act, and the funds need to be directed towards the operational needs of the school. Parents and friends raising funds for non-school donations must advise the community of the beneficiary before fundraising. Receipts and payments of the fundraising should be accounted for separately by the school as third party transactions. For example, a separate balance sheet or GL account.



## Use of School Income and Good Procurement Practices

Schools need to consider reasonable market value throughout the procurement process, especially when making payments to a related entity, other person or body for the procurement of property, goods or services. Schools should have appropriate procurement practices and policies in place to help ensure they are not paying above reasonable market value.

In addition, schools should also seek to have adequate records management processes in place when it comes to their procurement of goods and services.

Schools should consider implementing the following policies and documentation to help ensure that they are conducting their procurement activities in accordance with section 83C of the Act:

- use tenders, expressions of interest, preferred suppliers or competitive procurement processes for items of significant expenditure or long-term contracts;
- have a policy of getting three (3) or more quotes for lesser value procurement;
- have policies which adequately address the following matters;
  - conflicts of interest;
  - related-party transactions;
  - fraud and corruption;
  - appropriate delegations in relation to expenditure and procurement;
  - supplier registration and performance monitoring;
  - the collection and maintenance of procurement records (covering requisition and receipt);
- practices which keep all related documentation i.e. quotes not used will support evidence for the selection of the final supplier.
- staff awareness and training regarding procurement/ policies.
- clear board minutes detailing all approved actions.

### Case Study 6

A school advertises in a regional newspaper inviting tenders for the school grounds maintenance contract for the next 3 years. The school receives tenders from several different companies. The school establishes a committee made up of independent members to review each of the tenders. The committee recommends the tender representing the best value for money to the school's governing body. The school's governing body awards the contract to the preferred tenderer. Records are kept by the school (including evaluation of tenders) and an independent and competitive process has been followed. Such use of the school's funds is consistent with section 83C.

### Case Study 7

A primary school in southern NSW decides to undertake an advertising campaign to attract new student enrolments. The school principal contacts his brother-in-law (living in Coffs Harbour) who owns a local radio station and agrees, during a brief telephone conversation, to pay the radio station to run a local advertising campaign for a period of six months promoting the school. The agreement or details of the advertising campaign are not committed in writing. It is unlikely that the services provided will be reasonable in terms of market value and the Principal has a conflict of interest. Such use of the school's funds is not consistent with section 83C.

### Case Study 8

The Board reviews the schools current position and notices a reduction in enrolments. The board agrees to investigate a range of advertising alternatives with the aim of increasing enrolments.

A business plan which includes quotes on a range of options including printed, radio, social media and bill board advertisements is formulated which includes projected outcomes and provided to the board for approval. Options for radio and social media is approved with cost limits set by the board. The school activates a contract. At the end of the advertisement period the campaigns are monitored and information is fed back to the board in order to inform them of outcomes. All of this information is recorded and can be used if requested by the department or auditor. Such use of the school's funds is consistent with section 83C.

## Further Information and References

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 by email at [NGS-Compliance@det.nsw.edu.au](mailto:NGS-Compliance@det.nsw.edu.au).

The Not-For-Profit Guidelines for Non-Government Schools contains 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 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](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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