



Not-for-profit Guidelines for Non-Government Schools

September 2015

NSW Department of Education

First published in September 2015

© 2015 by the State of New South Wales through the NSW Department of Education.

Except as otherwise noted, these Guidelines are licenced under the Creative Commons Attribution 4.0 International Licence. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>.



Contents

- Definitions3**
- 1. Purpose and Effect of these Guidelines4**
- 2. Overview of Not-for-profit Requirements under the Education Act4**
- 3. Demonstrating Compliance - Overview5**
- 4. What is Reasonable Market Value?.....5**
- 5. Common Payments and Financial Transactions6**
 - 5.1 Payments to Individuals.....6**
 - 5.1.1 Employee Salaries, Benefits and Severance Packages.....6
 - 5.1.2 Payments to School Governing Body Members.....7
 - 5.2 Payments for Property, Goods and Services8**
 - 5.2.1 Purchasing Goods and Services8
 - 5.2.2 Building and Related Works9
 - 5.2.3 Consultant and Professional Services Fees..... 10
 - 5.2.4 Intellectual Property 11
 - 5.2.5 School Borrowings and Interest Payments..... 12
 - 5.2.6 School-related Travel 12
 - 5.3 Other Common Payments and Financial Transactions.....13**
 - 5.3.1 Compensation and Other One-Off Payments..... 13
 - 5.3.2 Student Scholarships and Cash Prizes 14
 - 5.3.3 Student Fee Concessions and Remissions 14
 - 5.3.4 Dealing with Doubtful Debts 15
- 6. Managing School Assets 15**
 - 6.1.1 Disposal of Valuable School Assets 15
 - 6.1.2 Leasing Property and Other Assets (School as Lessee) 17
 - 6.1.3 Leasing School-Owned Property and Assets (School as Lessor) 17
 - 6.1.4 Community Use of School Assets and Facilities 18
- 7. Related Party Transactions 19**
- 8. Useful Contacts and References20**
- Appendix 1: Section 83C of the *Education Act*.....21**

This page is intentionally blank.

Definitions

In these Guidelines:

Asset	in relation to a non-government school, means any item of property owned by the school that could be regarded as having value.
Book value	in relation to an asset of a non-government school, means the value of the asset on the school's balance sheet or other accounting records prepared in accordance with relevant accounting standards.
BOSTES	means the Board of Studies, Teaching and Educational Standards NSW.
Income	in relation to a non-government school, means all revenue and other financial benefits accruing to the school in the course of its operations, including (but not limited to) all State and Commonwealth financial assistance paid to the school, all school fees and parental contributions paid to the school, and all donations and other payments made to the school for any purpose.
Minister	means the NSW Minister for Education.
Non-government school	means both a registered non-government school and its proprietor within the meaning of section 3 of the <i>Education Act 1990</i> .
Not-for-profit requirements	means the obligation of non-government schools in receipt of financial assistance from the NSW Government to not operate for profit within the meaning of Part 7, Division 3 of the <i>Education Act 1990</i> .
Reasonable market value	means the amount that a knowledgeable and willing third party would pay for property, goods or services in an arm's length transaction from the seller.
Responsible person	means a responsible person within the meaning of section 3 of the <i>Education Act 1990</i> and BOSTES registration requirements for non-government schools.
School governing body	in relation to a non-government school, means any body or bodies responsible for making decisions that affect the whole, or a substantial part, of a school's operations. Schools may be required to substantiate that individual persons are or are not members of the school's governing body or bodies if requested to do so.

1. Purpose and Effect of these Guidelines

The following Guidelines are approved by the Minister for Education as relevant Guidelines under section 83L of the *Education Act 1990* (the Act). The Guidelines apply to all registered non-government schools in New South Wales (NSW). The purpose of the Guidelines is 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.

The Guidelines address a number of financial transactions commonly carried out by non-government schools, but are not exhaustive. The Guidelines do not restrict the operation of section 83C or any other provisions of the Act, or any other laws. In the event of an inconsistency between the Guidelines and the Act, the provisions of the Act prevail.

All registered non-government schools in receipt of NSW Government funding should adhere to the statutory obligations under the Act. The Guidelines provide examples of documentary evidence that may be used by non-government schools to demonstrate compliance with the Act.

2. Overview of Not-for-profit Requirements under the Education Act

On 29 January 2015, new funding eligibility requirements commenced for all non-government schools that receive NSW Government funding. These changes strengthen the requirements of the former section 21A of the Act.

Section 83C of the *Education Act 1990* requires all non-government schools to operate on a “not-for-profit” basis within the meaning of the Act in order to be eligible for funding from the NSW Government. This requirement is distinct from the not-for-profit status that non-government schools may have with the Australian Taxation Office (ATO) or the Australian Charities and Not-for-profits Commission (ACNC).

To be eligible for NSW Government funding under the Act, registered non-government schools must:

- a) only use school income and school assets for the operation of the school**
- b) ensure all payments for property, goods or services (including to related parties) are at no more than reasonable market value**
- c) ensure all payments for property, goods or services are reasonable in the circumstances, having regard to the fact that financial assistance is provided to the school**
- d) refrain from making payments to members of school governing bodies in connection with their role on the school governing body.**

Schools that breach these requirements may be declared for profit or non-compliant with the Act and have their NSW Government funding suspended, reduced or conditions on funding imposed. For profit or non-compliant schools may also be required to repay past NSW Government funding.

3. Demonstrating Compliance - Overview

Most non-government schools are compliant with the requirements of the *Education Act* and operate on a not-for-profit basis. However, schools may be required to demonstrate their compliance if they are subject to a compliance audit or investigation.

Non-government schools in receipt of NSW Government funding may be subject to a compliance audit at any time. Schools may also be issued with a direction to provide specific information to assist the Minister to determine the school's not-for-profit status.

In general, schools will be able to demonstrate compliance by ensuring appropriate financial controls and systems are in place, and that financial transactions are transparent and at market value. Section 4 of these Guidelines describes in more detail what reasonable market value means in the context of financial transactions carried out by schools. Evidence that conflicts of interest are being appropriately managed in relation to school operations is also a key component in minimising the risk of non-compliance.

These Guidelines provide examples of the types of documentary evidence that schools can reasonably be expected to have available in the event of an audit. The examples are not exhaustive and will depend on the particular circumstances of the school. However, they are intended to serve as a best practice guide.

Schools already maintain a set of records to meet other legislative and regulatory requirements (such as those of the Australian Tax Office, the Australian Charities and Not-for-profit Commission, the Australian Securities and Investment Commission and the BOSTES) and as part of internal school management practices. In many cases schools will be able to use existing records to demonstrate compliance with the not-for-profit requirements.

4. What is Reasonable Market Value?

Reasonable market value can be broadly defined as the amount that a knowledgeable and willing third party would pay for a specific good or service in an arm's length transaction from the seller.

This value may be influenced by a range of factors, including the circumstances surrounding the specific transaction. For example, the reasonable market value of urgent school maintenance work may be higher than routine maintenance as the work may need to be completed at short notice or outside of ordinary business hours.

Factors that may influence the reasonable market value of goods and services purchased by schools include:

- a) the quantity, quality and consistency of provision of the good or service
- b) the location and context of the school
- c) if the good or service is required urgently, at short notice or must be completed within a specified timeframe (for example, school holidays)
- d) if the good or service is in short supply at the required standard
- e) heritage or related issues (in relation to building and related works)
- f) local government requirements.

5. Common Payments and Financial Transactions

The purpose of this section is to provide non-government schools with guidance on complying with the not-for-profit funding requirements when carrying out common financial transactions.

It is the responsibility of schools to ensure that they have developed appropriate procurement policies and practices that are consistent with section 83C of the Act. Schools should also ensure appropriate records are kept to substantiate compliance with the not-for-profit requirements in the management of their financial affairs. Examples of relevant records and policies that could be used by schools to demonstrate compliance with section 83C for each transaction are listed below. However, the transactions and relevant records listed below are not exhaustive.

5.1 Payments to Individuals

5.1.1 Employee Salaries, Benefits and Severance Packages

Non-government schools are free to exercise discretion in the employment of school staff. This includes determining reasonable employee salaries and benefits, as well as recruiting specific staff to further an academic, educational, co-curricular or extra-curricular focus of the school. As noted in Section 4, reasonable market value may also reflect individual school circumstances.

All schools should implement internal controls that are appropriate within the context of the school to ensure accountability regarding employee-related payments.

Section 83C Requirements

Employee salaries and benefits must be:

- 1. required for the operation of the school**
- 2. at no more than reasonable market value for the property, goods or services**
- 3. reasonable in the circumstances, having regard to the fact that financial assistance is provided to the school.**

With reference to point 2 above, the school governing body has discretion to determine the market in which the school operates and to set appropriate salaries according to that assessment. For example, salary packages sometimes include the use of school-owned vehicles or other equipment (such as a mobile phone or laptop). Packages may also include sabbatical and study leave, and attendance at conferences. These types of benefits should be documented in individual employment contracts and retained on file at the school.

What records or policies could my school have to demonstrate compliance?

Records and policies that may assist schools to demonstrate section 83C compliance in relation to employee-related payments include:

- a) an employment contract or letter of offer for each school employee**
- b) a written job description for each school employee**
- c) personnel policies and procedures that address matters such as staff leave, overtime, allowances, reasonable personal use of schools assets and the recording of staff attendance, that are appropriate within the context of the school**
- d) evidence of employee payroll payments being authorised by the school Principal or another responsible person**
- e) written authorisation from all school employees to deposit salaries directly into the employee's nominated bank account**
- f) an appropriate policy for managing conflicts of interest and to ensure probity and accountability**
- g) appropriate records to support employee-related payments in addition to salary such as severance packages or bonuses, including documented reasons for the payment.**

5.1.2 Payments to School Governing Body Members

From 29 January 2015, non-government schools that receive NSW Government funding are no longer permitted to pay remuneration to members of school governing bodies in connection with their role on the school governing body.

Schools are permitted to reimburse school governing body members for reasonable expenses incurred as a necessary part of conducting school business, however reimbursed expenses should be supported by appropriate documentation.

Members of school governing bodies who also hold a paid role within the school, such as the school Principal or a teacher, should be remunerated exclusively in relation to their employment within the school and not their position on the school governing body. Section 5.2.3 Consultants and Professional Services and Section 7 Related Party Transactions may also be relevant here.

Alternative governance or management structures which are used to circumvent the prohibition of payment to governing body members under section 83C will be considered non-compliant.

Non-cash gifts of nominal value may be provided to school governing body members at the discretion of the school (for example, on retirement as recognition of service to the school).

Section 83C Requirements

Schools must not pay remuneration of any kind to school governing body members in connection with their role on the school governing body from 29 January 2015.

Payments may only be made by schools to school governing body members to reimburse a member for a payment made in connection with the operation of the school.

What records could my school have to demonstrate compliance?

Records that may assist schools to demonstrate section 83C compliance in relation to payments to school governing body members include:

- a) receipts for all purchases by school governing body members who have been reimbursed by the school
- b) documented reasons for all reimbursed purchases
- c) an employment contract and/or statement of duties for any other paid role in the school held by school governing body members in accordance with Employee salaries, benefits and severance packages in 5.1.1 above.

5.2 Payments for Property, Goods and Services

5.2.1 Purchasing Goods and Services

Non-government schools that receive NSW Government funding should ensure that procurement policies and practices comply with the not-for-profit requirements under the Act. Schools retain discretion to allocate resources in order to support a school mission or ethos. Schools should ensure that the level of documentation is commensurate with the significance of the purchase. For example minor purchases such as small stationery items may not need to be documented if the quantity is small and the cost low. However payments should be reasonable.

Section 83C Requirements

Property, goods and services purchased by schools must be:

1. required for the operation of the school
2. at no more than reasonable market value for the property, goods or services
3. reasonable in the circumstances, having regard to the fact that financial assistance is provided to the school.

What records or policies could my school have to demonstrate compliance?

Records and policies that may assist schools to demonstrate section 83C compliance in relation to school purchases include:

- a) a school purchasing manual that includes policies and procedures for testing the market value of purchases at different cost thresholds (including testing existing relationships) appropriate within the context of the school
- b) a school credit card policy that outlines procedures for the allocation and use of school credit cards, regular acquittal of school credit card expenditure by a responsible person for the school who is not the cardholder, and the submission/retention of purchase receipts
- c) appropriate records detailing all payments made by the school, including supplier invoices to support all school purchases (records for minor purchases/ incidentals of nominal value such as pens may not be required)
- d) appropriate records of quotes and/or tenders obtained for the purchase of property, goods or services by the school in accordance with the school's procurement policy
- e) appropriate records of goods and services purchased by the school being certified as received prior to or close to supplier payment
- f) appropriate records authorising school payments by a responsible person for the school.

5.2.2 Building and Related Works

Non-government schools may exercise discretion in constructing and maintaining built assets required for the operation of the school. In the context of building and related works, reasonable market value may be influenced by a range of factors including timeliness, the quality of the building finish and materials, and the availability and reliability of contractors.

Where payments are made for building and related works, schools should ensure that they can readily substantiate that work of that value was completed at the school. For new buildings, this may include retaining copies of relevant planning approvals and construction certificates.

Section 83C Requirements

Building and related works paid for by schools must be:

1. required for the operation of the school
2. at no more than reasonable market value
3. reasonable in the circumstances, having regard to the fact that financial assistance is provided to the school.

What records could my school have to demonstrate compliance?

Records that may assist schools to demonstrate section 83C compliance in relation to payments for building and related works include:

- a) written quotes for all building and related works (excluding routine maintenance work) that appropriately detail the scope of works obtained in accordance with the school's purchasing manual
- b) appropriate records supporting all payments for building and related works made by the school (including all supplier invoices), in accordance with *Purchasing Goods and Services* in 5.2.1 above
- c) appropriate records supporting any payments for building or related works that could be considered unusual for any reason (for example, work to heritage listed buildings or land remediation).

New Buildings and Other Substantial Works

Where applicable:

- a) copies of the development consent or "stamped plans"
- b) copies of the construction certificate and/or occupation certificate.

5.2.3 Consultant and Professional Services Fees

Non-government schools may engage the services of consultants and other professionals from time to time to provide advice in relation to school projects or operations. Engagements of this nature must be required for the operation of the school and reasonable in the circumstances.

Section 83C Requirements

Consultants and professional services paid for by schools must be:

1. required for the operation of the school
2. at no more than reasonable market value
3. reasonable in the circumstances, having regard to the fact that financial assistance is provided to the school.

What records could my school have to demonstrate compliance?

Records that may assist schools to demonstrate section 83C compliance in relation to payments for consultants and professional services include:

- a) appropriate evidence of the market value of the professional services being tested in accordance with the school's purchasing manual (or equivalent) prior to the engagement of the relevant consultant or expert
- b) a copy of a services agreement or contract detailing the nature of any professional services provided by consultants or experts to the school, including an estimate of the total expected cost
- c) appropriate evidence that any professional services paid for by the school were received, such as copies of any reports or other documents produced by the relevant consultant or expert.

5.2.4 Intellectual Property

Intellectual property refers to the legal protection of ideas and creative works, such as books, films and other educational materials.

Where non-government schools wish to purchase intellectual property, it must be required for the operation of the school and reasonable in the circumstances, having regard to the fact that financial assistance is provided to the school.

Section 83C Requirements

Intellectual property purchased by schools must be:

1. required for the operation of the school
2. at no more than reasonable market value
3. reasonable in the circumstances, having regard to the fact that financial assistance is provided to the school.

What records could my school have to demonstrate compliance?

Records that may assist schools to demonstrate section 83C compliance in relation to the purchase of intellectual property include:

- a) appropriate evidence of the intellectual property supplied to the school, such as a copy of the licence agreement or assignment document.

5.2.5 School Borrowings and Interest Payments

Non-government schools may exercise discretion in borrowing money and obtaining other finance required for the operation of the school. This includes obtaining finance from a lender of the school's choice and determining the type and structure of finance most appropriate for the school. The commentary in Section 4 in relation to reasonable market value is also applicable to the terms and conditions of school borrowings.

Section 83C Requirements

School borrowings must be:

1. required for the operation of the school
2. at no more than reasonable market value
3. reasonable in the circumstances, having regard to the fact that financial assistance is provided to the school.

What records could my school have to demonstrate compliance?

Records that may assist schools to demonstrate section 83C compliance in relation to school borrowings include:

- a) formal agreements to support all school borrowings and other finance taken out by the school
- b) appropriate documented reasons to support any school borrowings or other finance with a combined rate of interest and fees that could be considered unusually high given the type of loan, security provided, loan valuation ratio or other relevant circumstances.

5.2.6 School-related Travel

Non-government schools can exercise discretion in paying for travel expenses required for the operation of the school. However all non-government schools should develop a school travel policy. This may include paying for teachers or other school employees to attend training, development or relevant conferences, provision for sabbatical or study leave; the terms of which should generally be specified in the individual's employment contract.

Personal travel must not be paid for by school funds unless included as an employee benefit in accordance with an industrial award or agreement, or employment contract or equivalent that complies with *Employee Salaries, Benefits and Severance Packages* in 5.1.1 above.

Section 83C Requirements

Travel-related expenses paid for by schools must be:

1. required for the operation of the school
2. at no more than reasonable market value
3. reasonable in the circumstances, having regard to the fact that financial assistance is provided to the school.

What records or policies could my school have to demonstrate compliance?

Records that may assist schools to demonstrate section 83C compliance in relation to school-related travel payments include:

- a) policies and procedures for the payment of school-related travel expenses appropriate within the context of the school
- b) appropriate evidence that all travel expenses paid for by the school were required for the operation of the school and not personal in nature
- c) appropriate evidence that all travel expenses paid for by the school were approved by the school Principal or another responsible person for the school
- d) where a travel allowance forms part of the salary package of a school employee, an employment contract or equivalent detailing the nature of the allowance in accordance with *Employee Salaries, Benefits and Severance Packages* in 5.1.1 above.

5.3 Other Common Payments and Financial Transactions

5.3.1 Compensation and Other One-Off Payments

It may be necessary from time to time for schools to make compensation or other one-off payments to individuals or groups, for example, to settle a public liability claim or an employment matter. Where compensation or other one-off payments are made, schools should ensure that payments are consistent with any orders, instructions or recommendations given by a relevant Commission or Court, where applicable.

Section 83C Requirements

Compensation and other ex-gratia payments made by schools must be:

1. required for the operation of the school,
2. at no more than reasonable market value (where applicable)
3. reasonable in the circumstances, having regard to the fact that financial assistance is provided to the school.

What records or policies could my school have to demonstrate compliance?

Records that may assist schools to demonstrate section 83C compliance in relation to compensation and other ex-gratia payments include:

- a) appropriate legal documentation supporting any compensation or related payments made by the school (such as a copy of a deed of settlement)
- b) appropriate records detailing the reasons for any compensation or other ex-gratia payments made by the school
- c) policies and procedures to support any routine compensation or other ex-gratia payments made by the school.

5.3.2 Student Scholarships and Cash Prizes

Schools may exercise discretion in making reasonable payments to students in connection with cash prizes, scholarships and related activities.

What records or policies could my school have to demonstrate compliance?

Records and policies that may assist schools to demonstrate section 83C compliance in relation to student scholarships, cash prizes or equivalent such as vouchers include:

- a) policies and procedures supporting any student scholarship or cash prize routinely awarded by the school
- b) appropriate records supporting any payments made by the school in connection with a student scholarship or cash prize, including that the payment was authorised by a responsible person within the school.

5.3.3 Student Fee Concessions and Remissions

Schools may exercise discretion in offering student fee concessions or remissions to existing or prospective students of the school.

What records or policies could my school have to demonstrate compliance?

Records and policies that may assist schools to demonstrate section 83C compliance in relation to student fee concessions or remissions include:

- a) policies and procedures supporting any student fee concessions, remissions or other adjustment to fees and charges offered by the school.

5.3.4 Dealing with Doubtful Debts

Schools may consider writing off or selling doubtful debts (where legally allowed) in accordance with a policy or procedure for dealing with doubtful debts that is appropriate within the context of the school.

What records or policies could my school have to demonstrate compliance?

Records and policies that may assist schools to demonstrate section 83C compliance in relation to doubtful debts include:

- a) a policy or procedure for writing-off or selling doubtful debts (where legally allowed) appropriate within the context of the school**
- b) appropriate records supporting all doubtful debts written-off or sold by the school, including records of authorisation by a responsible person for the school.**

6. Managing School Assets

It is a requirement of section 83C of the Act that school assets only be used for the operation of the school. However it is also common practice for schools to have various arrangements for the community or shared use of school assets and facilities, such as halls and playing fields. This has been encouraged by past government programs such as the Building the Education Revolution grants scheme. The purpose of this section is to provide guidance to non-government schools on complying with the Act in the context of managing school assets.

The examples listed below are not exhaustive. However, non-government schools should adhere to all mandatory requirements below to ensure compliance with the Act.

It is the responsibility of schools to ensure that appropriate records are kept to substantiate compliance with the not-for-profit requirements in the management of school assets. Examples of relevant records and policies that could be used by schools to demonstrate compliance with section 83C are listed below.

6.1.1 Disposal of Valuable School Assets

Non-government schools that receive NSW Government funding may only dispose of valuable school assets at reasonable market value. In some cases, reasonable market value may be less than the asset's Book Value, particularly where there is limited demand for the school asset being disposed.

Whether a school asset is valuable will depend on the circumstances. For example, school computers approaching the end of their useful life will generally not be considered valuable school assets. However, a new desktop computer still in its original packaging would be considered a valuable school asset.

Section 83C Requirements

A school operates for profit if any part of its proprietor's assets (as they relate to the school) is used for any purpose other than for the operation of the school.

What records or policies could my school have to demonstrate compliance?

Records and policies that will assist schools to demonstrate section 83C compliance in relation to the disposal of valuable school assets include:

- a) a school asset register listing the details of all school assets above a nominated value appropriate within the context of the school**
- b) appropriate evidence of annual asset stocktakes being completed by the school or evidence of other review of valuable assets being conducted by the school in line with the normal annual audit process**
- c) policies and procedures for disposing or writing-off valuable school assets**
- d) appropriate records supporting the disposal or write-off of any valuable school asset, including that the disposal or write-off was approved by a responsible person within the school.**

School Asset Register

It is suggested that school asset registers include:

- a) a description of the asset**
- b) the serial number of the asset if applicable**
- c) the date and cost of purchase of the asset**
- d) the invoice number for the purchase**
- e) the date and method of disposal (if applicable)**
- f) any amount recovered at disposal (if applicable)**

6.1.2 Leasing Property and Other Assets (school as lessee)

Schools may exercise discretion in entering into leases for property and other assets that comply with the Act.

Section 83C Requirements

Leases and similar arrangements entered into by schools as the lessee must be:

1. required for the operation of the school
2. at no more than reasonable market value for the property or assets
3. reasonable in the circumstances, having regard to the fact that financial assistance is provided to the school.

What records could my school have to demonstrate compliance?

Records that may assist schools to demonstrate section 83C compliance in relation to the leasing of property and other assets required for the operation of the school include:

- a) a formal written lease agreement for all school leases and similar arrangements
- b) evidence of the market value of the lease being tested.

6.1.3 Leasing School-Owned Property and Assets (school as lessor)

Non-government schools may lease school-owned property or assets to third parties. This may include leasing the school canteen or uniform shop to a private operator.

Where a school receives a non-financial benefit from the lease of school-owned property or assets to a third party (such as the school canteen), it is acceptable for the lease arrangement to be on terms that are reasonable in the circumstances. Other lease arrangements entered into by schools, such as the leasing of a school-owned investment property, should be at no less than reasonable market value.

Section 83C Requirements

A school operates for profit if any part of its proprietor's assets (as they relate to the school) is used for any purpose other than for the operation of the school.

What records or policies could my school have to demonstrate compliance?

Records and policies that may assist schools to demonstrate section 83C compliance in relation to the leasing of school-owned property and assets include:

- a) a formal lease agreement (or equivalent) supporting all leases of school property and assets**
- b) evidence of the market rent of leased property and assets being tested prior to the school entering into a lease agreement for the property or assets in accordance with relevant school policies and procedures**
- c) evidence that the terms of the lease are reasonable in the circumstances where the lease is for the benefit of the school.**

6.1.4 Community Use of School Assets and Facilities

Community or shared use of non-government school assets and facilities is at the discretion of the school. This may include allowing a local swim school to hire a school swimming pool for the delivery of community swimming lessons, or sharing a school lawn mower with a church or religious group affiliated with the school.

Schools may exercise discretion in determining whether it is appropriate in the circumstances to charge a fee for any reasonable community or shared use of a school asset or facility.

The use of school assets or facilities for community or shared use will generally be considered reasonable if the school can terminate use of the school assets or facilities by the relevant group or person at short notice, without incurring a financial or other penalty under a formal agreement (or equivalent); and the school ordinarily has access to the relevant assets or facilities for exclusive use during school hours.

Section 83C Requirements

A school operates for profit if any part of its proprietor's assets (as they relate to the school) is used for any purpose other than for the operation of the school.

What records could my school have to demonstrate compliance?

Records that may assist schools to demonstrate section 83C compliance in relation to the community use of school assets and facilities include:

- a) relevant correspondence or formal agreement setting out the terms and conditions for use of the school assets or facilities**
- b) a formal lease agreement (or appropriate documentation) consistent with Leasing School-Owned Property and Assets in 6.1.2 above to support any use of school property or assets that is not reasonable community use.**

7. Related Party Transactions

In the context of a non-government school, a Related Party Transaction includes any transaction through which a responsible person acting on behalf of the school provides a financial or other tangible benefit to a related party. This may include a cash or in-kind payment to a related party for any purpose, including in connection with the supply of property, goods or services to or by the school.

For the purposes of these Guidelines, a related party includes (but may not be limited to):

- a member of the school governing body, principal or other responsible person in the school
- a close relative of a member of the school governing body, principal or other responsible person in the school
- any company or other entity that owns, controls or has significant influence over the school or vice versa (for example, parent entities, subsidiaries or agencies of the school's proprietor)
- any for profit or not-for-profit organisation affiliated with the school (for example, affiliated religious groups)
- a company or other entity owned (wholly or partly) by any of the above
- a company or other entity under the control or significant influence of any of the above
- any third party otherwise acting in concert with any of the above.

The requirements below should be closely adhered to by schools when engaging in a Related Party Transaction to ensure compliance with the Act.

Any significant Related Party Transaction carried out by a non-government school should also be approved by the school's governing body.

Section 83C Requirements

Any payments or other benefits provided by schools to related parties must be:

- 1. for property, goods or services required for the operation of the school**
- 2. at no more than reasonable market value for the property, goods or services**
- 3. reasonable in the circumstances, having regard to the fact that financial assistance is provided to the school.**

It is also a BOSTES school registration requirement that all related party transactions carried out by schools be disclosed and recorded in the school's Related Party Transactions Register.

Other laws and regulations may also apply to related party transactions carried out by schools (for example, under charities law). The requirements above do not limit the operation of any other laws that may apply in a school's specific circumstances.

For further information on BOSTES school registration requirements, schools should refer to the *Registered and Accredited Individual Non-Government Schools Manual* and the *Registration Systems and Member Non-Government Schools Manual* at www.boardofstudies.nsw.edu.au.

8. Useful Contacts and References

For more information on these Guidelines or the requirements of Part 7, Division 3 of the *Education Act 1990*, schools should contact their relevant peak body or the External Relations Policy Directorate in the NSW Department of Education on (02) 9561 8658.

For further information on the governance standards or any other school registration requirements for non-government schools, schools should contact the NSW Board of Studies, Teaching and Educational Standards on (02) 9367 8432.

An up-to-date copy of the *Education Act 1990* can be accessed at www.legislation.nsw.gov.au.

An up-to-date copy of the *Registered and Accredited Individual Non-Government Schools Manual* and the *Registration Systems and Member Non-Government Schools Manual* can be accessed at www.boardofstudies.nsw.edu.au.

Appendix 1: Section 83C of the *Education Act 1990*

83C Financial assistance not to be provided to schools that operate for profit

- (1) The Minister must not provide financial assistance (whether under this Division or otherwise) to or for the benefit of a school that operates for profit.
- (2) A school operates for profit (without limiting the circumstances in which it does so) if the Minister is satisfied that:
 - (a) 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, or
 - (b) any payment is made by the school to a related entity or other person or body:
 - (i) for property, goods or services at more than reasonable market value, or
 - (ii) for property, goods or services that are not required for the operation of the school, or
 - (iii) for property, goods or services that is in any other way unreasonable in the circumstances having regard to the fact that financial assistance is provided to or for the benefit of the school by the Minister, or
 - (c) any payment is made by the school to a person in connection with the person's activities as a member of the governing body of the school unless it is in reimbursement for a payment made by the person in connection with the operation of the school.
- (3) The regulations may specify whether or not a school operates for profit because of any particular use of assets or income, any particular payment in relation to the school or any other matter. Any such regulation has effect despite anything to the contrary in subsection (2).
- (4) The Minister is not obliged to terminate the provision of financial assistance because of this section if, following an investigation under this Division, the Minister is satisfied that:
 - (a) termination of financial assistance is not justified because of the minor nature of the relevant conduct, or
 - (b) more appropriate action can be taken under section 83E.