Memorandum

To: Diocesan Directors
    Principals of Congregational Schools

From: Ian Baker, Director – Education Policy and Programs

Subject: NSW Education Act Section 83C Not-for-Profit Compliance Update

You are reminded that two Not-for-Profit Fact Sheets, as prepared by the NSW Office of Education, were forwarded to you in November 2014; refer CECNSW memos 229/14 of 17 November 2014 and memo 219/14 of 3rd November 2014.

Attached for your ready reference is a copy of Section 83(C).

Section 83(C) requirements came into effect on 29 January 2015.

You are reminded that the key new Not-for-Profit compliance requirements are:

(i) Non-government schools are no longer permitted to make payments to members of school governing bodies in connection with their role on the school governing body, except to reimburse payments made in connection with the operation of the school. This includes remuneration of any kind.

(ii) All related party transactions including between related not for profit entities must, from 29 January 2015, meet section 83(C) Not-for-Profit transaction requirements. These requirements are expressed in the three tests of: “payments are for not more than market value, are required for the running of the school and are reasonable”.

Pending finalisation of new section 83(C) Not-for-Profit Guidelines the following indicators for not-for-profit third party transaction compliance assessments should be considered.

- A related party transaction may include any transaction through which a ‘responsible person’ acting on behalf of the school provides a financial or other tangible benefit to a related party.

- Related party transactions may include any cash or in-kind payment to a related party for any purpose and may or may not occur in connection with the supply of property, goods or services to the school. Related party transactions may also occur in the disposal of school assets.

- Related parties may include:
  - A member of the school governing body, principal or other decision-making person in the school.
- A close relative of a member of the school governing body, principal or other decision making person in the school.
- A company or other entity owned (wholly or partly) by any of the above persons
- A company or other entity under the control of significant influence of any of the above persons.
- Any third party other otherwise acting in concert with any of the above persons.

Common Catholic sector third party service providers to Catholic schools include CCI, CDFs, CeNet and PJPs.

Please note the above advice is preliminary in nature only and does not necessarily reflect the advice to be provided in formal section 83(C) NSW Government Guidelines.

When developing Not-for-Profit compliance responses, Diocesan Directors and Principals of Congregational schools are reminded of the need to have regard to the new BOSTES requirements for “Policies and Procedures for the Proper Governance of a School(s)”. These Governance requirements are set out in the BOSTES School/System Registration and Accreditation Manuals available on the BOSTES website, refer CECNSW memo 193/14 of 2nd October 2014, “New BOSTES School Registration Requirements Relating to School Governance”.

All Catholic school authorities are encouraged to obtain independent section 83(C) legal and accounting compliance advice.

This office will forward the anticipated section 83(C) Guidelines once they become available later in term 1.

Please contact Ian Baker email ian.baker@cecnsw.catholic.edu.au if you have questions or advice.

**DISCLAIMER:**
This memo does not constitute legal advice. The information set out is of a general nature only. Catholic school authorities should seek independent legal and accounting advice on section 83(C) compliance issues as they relate to their School(s).
EDUCATION ACT 1990 - SECT 83C

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

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.