



# CATHOLIC SCHOOL P&F ASSOCIATIONS AND SECTION 83C



Section 83C of the *Education Act 1990* (NSW) (the Act) stipulates that a school cannot receive any financial assistance from the Minister of Education if the school operates for profit

## WHAT P&Fs\* NEED TO KNOW

A school operates for profit where the school's registered proprietor uses 'any part of its income' for a purpose other than for the operation of the school.

Income is broadly defined in section 83C and includes

*money or other forms of consideration received periodically from the provision of property, goods or services, investments, gifts, donations, grants, financial assistance or any other gain obtained from the use of a school's assets or its proprietor's assets.*

The Non-Government Schools Not-For-Profit Committee issued guidance on the meaning of income in its newsletter issued in Term 3, 2018 and further explains that

*income, [f]or the purposes of the Act [...] 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.*

Consequently, the term 'income' in the Act does not confine itself to amounts which a school receives as a result of government financial assistance programs but extends to donations made to a school, either directly or through the P&F association.

\* P&Fs refers to any parent body in schools and dioceses such as PEGs, parent forums and school advisory councils.

**Note:** The information in this brochure serves as a guide only. You should check with your diocesan legal and governance department for final clarification of this information. Please also be aware that legislation changes may render this information outdated.

## WHAT P&Fs NEED TO DO

P&F associations must ensure that

- a) donations are used solely for the school and not for other purposes;
- b) payments to related parties are recorded and at reasonable market value;
- c) payments cannot be made to members of school governing bodies (such as directors of the school board or members of the school council).



A school that does not comply with section 83C may be declared to be 'operating for profit' by the Minister under section 83D of the Act (a for-profit declaration), with consequences such as government financial assistance being cancelled and the Minister taking action to recover past funding (during any period the school was determined to be operating for profit).

It is also important to note that Catholic schools are governed by the requirements of Canon Law.

In particular, when receiving donations, schools and P&F associations must observe Canon 1300, which requires the intentions of those who give donations to be carefully observed.

In other words, if you promote a fundraising activity for the purpose of supporting the school, then the donation can only be used for that purpose.

## WHO ESTABLISHES THE P&F CONSTITUTION?

- ▶ Systemic Catholic schools generally have a diocesan wide Constitution that is used by each school's P&F Association. No other Constitution is valid.
- ▶ Each school within the diocese will need to ensure their P&F Association adopts and complies with the Constitution.
- ▶ A P&F Association may adopt By-Laws that are consistent with the Constitution with the approval of the principal.

## WHAT IS THE ROLE OF PRINCIPALS IN A P&F?

### SYSTEMIC SCHOOLS

- ▶ The principal in each school is a responsible person and therefore is the person who has the responsibility of oversight of the P&F and ensuring the P&F is compliant with respect to fundraising activities, any risk assessments required and any acquittal, reporting and auditing of P&F funds.
- ▶ The principal should keep a copy of meeting Minutes and Agenda as well as a copy of the annual audit report.

### INDEPENDENT SCHOOLS

- ▶ Independent schools may also have a P&F Association or Committee. They will generally have a constitution that is for use within the school. Independent school P&F Associations or Committees also operate under the oversight of their principal.

## WHY DO P&F ASSOCIATIONS HAVE SUB-COMMITTEES?

Sub-committees are formed by a P&F Association to undertake specific planning and/or management tasks on behalf of the P&F Association e.g. fetes, trivia nights etc.

There are two types of sub-committees:

- ▶ Ad-hoc: These sub-committees are formed to acquit specific tasks, such as a fete. These subcommittees cease to exist after the task is finished.
- ▶ Standing: These sub-committees have an ongoing role, such as an OOSH, Canteen, Uniform or Band sub-committee.

### What is the working relationship between sub-committees and the P&F Association?

Sub-committees have delegated authority as outlined in the rules put in place by the Constitution.

## WHAT ARE THE LINES OF COMMUNICATION?

### What if the P&F Association has a problem regarding the school?

In the event of any problem regarding the school, the P&F Association's Officers should arrange to discuss the matter with the proper person. The first approach should always be to the principal.

### Is it really a P&F Association matter?

Where an issue is raised regarding individual children or families this is not a P&F Association matter and the people involved or affected need to make an approach to the principal directly. P&F Association meetings are not suitable forums for discussing individual students, specific teaching practices/classroom incidents or specific families. If you find your P&F Association discussing personal matters, ask the President to move on to the next item of business.

## CAN WE USE THE P&F FUND TO PROVIDE GIFTS FOR RETIRING TEACHERS?

No. Funds CANNOT be used for any other purpose than to further the education of students.eg: the purchase of gifts etc. for retiring members of staff using P&F funds is not acceptable. Individual members may like to make a contribution towards a gift for the outgoing parent/carer.

## CAN A P&F COMMITTEE BE A SEPARATE ENTITY?

Yes. Where the P&F Committee is a separate entity (that is, is an incorporated association) from the school, section 83C will likely not apply. Notwithstanding that, the P&F will be bound by the Constitution of the P&F Committee established upon incorporation. The Constitution should adopt language similar to that of section 83C requiring the P&F objectives to contribute its funds to the operation of the school.

## REFERENCES


Non-Government Schools not-For-Profit Advisory Committee ([nsw.gov.au](http://nsw.gov.au))  
Not-For-Profit Guidelines for Non-Government Schools

## WHAT ARE THE IMPLICATIONS FOR P&F ASSOCIATIONS AND OTHER PARENT GROUPS?

P&F STRUCTURES	LEGAL STATUS	NOT-FOR-PROFIT APPLICATION	IMPLICATIONS
P&F Associations structured as incorporated associations under the NSW Associations Incorporation Act 2009	Separate Legal Entity	<p>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.</p> <p>Funds raised and paid to a school become an asset of the school and as such are subject to the requirements of the Act.</p>	If a P&F Association is incorporated, it can operate outside of the structure of the school. It is then a separate entity and essentially able to call itself any name it chooses. Separate insurances will need to be put in place as the umbrella policies of the school will not cover the association's activities. The association will also be required to report to the relevant statutory bodies such as the ACNC regarding their fundraising activities.
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.	<p>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.</p>	Unincorporated associations are essentially similar to a subcommittee of the school. They are covered by the school's umbrella insurance (provided activities are only conducted with the approval of the PP and/or Principal). Associations do not need an ABN and are not required to report their financial activities to the ACNC or other state or federal regulatory bodies. They may be required (dependent on the constitution) to conduct annual audits.

### NEED MORE INFORMATION?

Please contact the Council of Catholic School Parents

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