

Independent Schools
Council of Australia

Lt038

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Senate Standing Committees on Economics
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Inquiry into the Australian Charities and Not-for-profits Commission (Repeal) (No. 1) Bill 2014

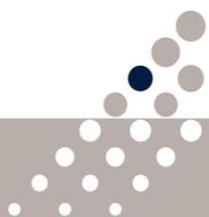
The Independent Schools Council of Australia (ISCA) welcomes the opportunity to present this submission to the Senate Economics Legislation Committee's inquiry into the Australian Charities and Not-for-profits Commission (Repeal) (No. 1) Bill 2014. ISCA is the peak national body covering the independent schools sector and comprises the eight State and Territory Associations of Independent Schools. Through these Associations, ISCA represents a sector with about 1,080 schools and 567,000 students, accounting for 16 per cent of Australian school enrolments. ISCA's major role is to bring the unique needs of independent schools to the attention of the Australian Government and to represent the sector on national issues.

About Independent Schools

Independent schools are a diverse group of non-government, not-for-profit (NFP) schools serving a range of different communities. Many independent schools provide a religious or values-based education. Others promote a particular educational philosophy or interpretation of mainstream education.

Their legal structures can be diverse with many falling into the following categories:

- Schools that are fully owned by a church (e.g. some Uniting Church Schools);
- Schools established by state Acts of Parliament with the specific purpose of establishing the school as a charitable institution (e.g. some Grammar Schools);
- Schools which are an administrative unit operating within an Association or "system" owned by a church;



- Schools which are a company. Many of these are limited by guarantee and assets can be owned by an underlying church property trust. In some cases the company owns the school outright;
- Public benevolent institutions (e.g. some Indigenous Schools).

Some schools with common aims, religious affiliations and/or educational philosophies also belong to a system within the sector. This means that some operational functions are carried out by the system on behalf of all schools within the system.

Independent schools include:

- Schools affiliated with larger and smaller Christian denominations for example, Anglican, Catholic, Greek Orthodox, Lutheran, Uniting Church, Seventh Day Adventist and Presbyterian schools
- Non-denominational Christian schools
- Islamic schools
- Jewish schools
- Montessori schools
- Rudolf Steiner schools
- Schools constituted under specific Acts of Parliament, such as grammar schools in some states
- Community schools
- Indigenous community schools
- Schools that specialise in meeting the needs of students with disabilities
- Schools that cater for students at severe educational risk due to a range of social/emotional/behavioural and other risk factors.

Independent schools are registered with the relevant state or territory education authority and most are set up and governed independently on an individual school basis. Those that are administered as systems, account for 18 per cent of schools in the independent sector.

Independent Catholic schools are a significant part of the sector, accounting for 8 per cent of the independent sector's enrolments. However, all schools have formal boards of governors or committees of management that are the key decision-making bodies for most independent schools and are responsible for issues such as the school's educational provision, current and future development and staffing.

School Regulatory Environment

In addition to their NFP status, all independent schools are also charitable institutions that are required to be separately registered with the relevant state or territory education authority as a charity. As a school, they currently have extensive registration and reporting responsibilities to both the Commonwealth and State/Territory Governments on a range of schooling and child welfare issues and additionally they already have legal obligations as incorporated bodies.

The Australian Government is the source of most of the public funding for non-government schools and in order to be eligible for this funding assistance, non-government schools must be NFP institutions and comply with wide ranging and detailed legislative requirements. This requirement is made clear in Sections 75 and 76 of the *Australian Education Act 2013*. In order to be approved by the Minister as an approved authority and receive government funding, an approved authority must comply with Section 75 which states:

” (1) This section sets out requirements for a person for the purposes of subparagraph 73(1)(b)(i) and paragraph 81(1)(a).

Note: Approved authorities for government schools may be taken to satisfy the requirements in this section (see section 76).

Body corporate or body politic

(2) *The person is a body corporate or a body politic.*

Not-for-profit

(3) *The person does not conduct for profit any school in relation to which the application is made.*

Financial viability

(4) *The person is financially viable.*

Fit and proper person

(5) *The person is fit and proper to be an approved authority for one or more schools.*

ComLaw Authoritative Act C2013.A00067

*Approving authorities and bodies **Part 6***

*Approving approved authorities **Division 2***

Further, Section 76 of the Act states:

Matters to have regard to

(6) *For the purposes of determining whether a person satisfies the requirement in subsection (3), (4) or (5), the Minister may have regard to:*

(a) for the purposes of subsection (3)—whether the State or Territory Minister for a school in relation to which the person is applying considers that the person conducts the school for profit; and

(b) for the purposes of subsection (4)—the amount of financial assistance the person receives, or is likely to receive, from the Commonwealth, a State or a Territory; and

(c) for the purposes of subsection (5)—whether the person has complied, or is complying, with laws of the Commonwealth, a State or a Territory relating to the provision of school education; and

(d) any other matters the Minister considers relevant.

Note: The regulations may prescribe other matters that the Minister may or must have regard to in making a decision under this section (see paragraph 130(2)(b)).

Permission under law of relevant State or Territory

(7) *For each level and location specified in the approval, the person is permitted under a law of the relevant State or Territory to provide that level of education at that location.”*

Schools are also obliged to work co-operatively with their state or territory government to support that government in fulfilling its obligations under the National Education Agreement. Independent schools must also agree to support the achievement of the National Declaration on Educational Goals for Young Australians and the Council of Australian Governments (COAG) outcomes for schooling.

Schools must participate in all specified National Student Assessments, participate in the preparation of the National Report on Schooling in Australia, collect and provide extensive information relating to individual students and school information to all organisations specified in the Regulations, including the Australian Government Department of Education (DoE) and the Australian Curriculum, Assessment and Reporting Authority (ACARA). Schools must report to parents in compliance with legislated requirements, annually report and publish specified information relating to aspects of the school and its operations and implement the national curriculum.

Independent schools must also submit to DoE annually a Financial Questionnaire. The Financial Questionnaire is an annual collection of financial income, expenditure and liabilities from all non-government schools receiving Australian Government general recurrent grants. The Financial Questionnaire data draws on a school's audited financial statements. Schools are also subject to scrutiny of their financial operations including the financial viability and funding sources of the school. Independent schools must demonstrate that the funds received under each Australian Government funding program have been expended appropriately. This includes providing the Australian Government with certificates certified by qualified accountants regarding the expenditure of Australian Government grants. All accounts, records and documents as well as free access to each campus of a school must be available to the Auditor-General or DoE officers.

Independent schools are bound by a number of other legal requirements associated with their operations. For example, as companies limited by guarantee or as incorporated associations, independent schools still have some reporting responsibilities to the Australian Securities and Investments Commission, or to their state or territory registrar of associations. Associations must submit audited financial statements to their state or territory registrar which are available for public scrutiny. They are also subject to regulation by the Australian Taxation Office.

As employers, independent schools must comply with legislation and regulations covering such issues as occupational health and safety and industrial awards. As educational institutions they must comply with health and safety, privacy and child protection requirements, town planning requirements, human rights and equal opportunities legislation, as well as regulations relating to building and fire codes.

The My School web site (operated by ACARA) offers an additional and easily accessible level of transparency to the operations of schools in all sectors. ACARA collates and publishes a range of student outcomes and performance indicators of school services, including a comprehensive overview of the financial aspects of a school's operations.

Impact of ACNC Establishment

The establishment of a national charity regulator was an ambitious step by the former Government to improve the regulatory environment for charities. The aim of reducing red tape for the charity sector generally was a commendable objective, but it would appear to be difficult to achieve. Schools are already under considerable reform pressure in relation to funding,

curriculum and potential reporting reforms (DoE and ACARA). As an already highly regulated charity, each non-government school (both independent and Catholic) must now comply with the new range of regulatory reforms administered by the ACNC without the benefits of the yet to materialise significant lessening of the complex regulatory environment for schools outlined above. It is relevant to note that government schools are not required to comply with the ACNC regulatory structure, thus creating an imbalance of regulatory compliance requirements on non-government schools.

An examination of the existing regulatory structures for independent schools indicates that the objective of reducing the regulatory burden on the non-government schools sector through the future operations of the ACNC and the harmonisation of its associated legislative powers with these other jurisdictions is unachievable. It is far from clear that an agreement can be reached with all states, territories and government agencies to remove any of the operational requirements for non-government schools that were already in existence prior to the establishment of the ACNC.

In the Guide to the ACNC Act, it states that “The Commissioner of the ACNC will cooperate with other government agencies to oversee a simplified and streamlined regulatory framework for not-for-profit entities.” Although a Non-government School Sector Reporting Duplication Working Party has been established by the ACNC with membership including the Department of Education and non-government school representatives, very little progress has been made to identify those elements of the current regulatory framework which would be taken over in future by the ACNC.

ISCA considers that in the short term, the regulatory burden has been increased on individual non-government schools by the establishment of the ACNC, creating a costly and confusing duplicative governance and reporting environment. Schools now have to populate the ACNC’s Register with updated charity information and also provide the Annual Information Statement covering a number of areas of the schools operational activities.

The general growth in regulatory pressures facing independent schools in recent years is reflected in non-teaching staff numbers that have increased by 60% in the last ten years to 2013, primarily due to the increasing compliance burden being placed on these schools. This compares with an increase in student numbers of 29% and teachers of 34%. Schools would welcome any initiative that seeks to reduce this compliance burden.

The Australian Government proposes to establish the National Centre for Excellence (NCE) to support the work of the charity sector. Although full details of the NCE are yet to be released, it is understood that the Government intends to limit its role to one that has a focus on the education, training and development for the charitable sector rather than the current regulatory role of the ACNC. ISCA considers that the independent school sector would benefit from the establishment of the NCE and sees a supportive structure for the charitable sector as preferable to one that increases the regulatory burden on independent schools.

Independent schools would want to ensure that any change to the regulation of charities did not also mean change to the implementation of *The Charities Act 2013*, in which the educational activities of independent schools was for the first time legislated as being of public benefit. This definition of education as being of public benefit (and therefore a charitable activity) has brought a level of surety to the continuing viable operations of independent schools and their access to tax benefits and exemptions. It is imperative for the continuation of a vibrant independent schooling sector that this legislation remains in place.

The independent schools sector would also want to be assured that any changes made to the regulation of schools would not involve any new or increased reporting requirements for them. Under the current transitional arrangements, the ACNC accepts that the financial reports schools make to the DoE fulfil the requirements of financial reporting to the ACNC and therefore, do not require schools to lodge financial reports with the ACNC. ISCA would want to be assured that this would continue to be the accepted reporting regime for schools with the regulator, ensuring that there is no increase in the red tape imposed on schools.

Conclusion

Schools operate in a dynamic environment which is influenced not only by changing societal expectations for education, population demographics and world financial markets, but also by changing government policy. Any non-educational reform agenda that has an impact on the ability of individual independent schools to deliver educational outcomes is potentially counterproductive to improving these educational outcomes. Additional levels of compliance relating to their role and responsibilities as a charity is distracting and inefficient.

Unless there was a guarantee that the many compliance activities already imposed on schools by all levels of Government would be reduced in the near future, ISCA believes that the ongoing regulatory environment created by the establishment of the ACNC is currently adding to the compliance burden of independent schools. ISCA also believes that should the ACNC be abolished, a reduction in the regulatory burden for schools should be a consideration in developing any alternative arrangements.

ISCA looks forward to further consultation on these initiatives.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bill Daniels', with a stylized flourish at the end.

Bill Daniels
Executive Director