

Independent Schools Council of Australia

Submission

Definition of Charity – Response to Consultation Paper

8 December 2011



**Independent Schools
Council of Australia**

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INTRODUCTION

About ISCA

The Independent Schools Council of Australia (ISCA) is the peak national body covering the independent schools sector. It comprises the eight state and territory Associations of Independent Schools. Through these Associations, ISCA represents a sector with 1,090 schools and around 550,000 students, accounting for nearly 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 Commonwealth Government and to represent the sector on national issues.

Independent schools are a diverse group of non-government 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. 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.*

A number of Catholic schools are not part of the Catholic system. These independent Catholic schools are a significant part of the independent sector, accounting for 10 per cent of the independent sector's enrolments. These schools have been included in the figures above.

KEY POINTS

- There is a long-held consensus that education, and in particular the provision of schooling is a public benefit. The independent sector considers that for charities engaged in the advancement of education, particularly schools, the public benefit is self-evident. The education of the individual not only benefits that individual but the cumulative education of individuals benefits society as a whole. These benefits to the individual and society are recognised and reinforced through government policies relating to compulsory school attendance and funding support for all not-for-profit schools.
- The independent sector appreciates the Commonwealth Government's imperatives to provide clarity around the status of charities, including addressing the associated statutes and entitlements and the role and powers of government agencies. However the sector does not believe that overturning the presumption of public benefit for independent schools should be a predetermined consequence of achieving this policy outcome. The independent schools sector believes that all options for improving the capacity for government authorities to regulate and enforce charities law should be considered by the Commonwealth Government, with the drastic measure of overturning the presumption of public benefit for non-government schools being a last, rather than a first resort.
- Regardless of the approach the Commonwealth Government takes to progress this agenda, it is critical that not-for-profit non-government schools continue to be recognised as a class of institution, deemed to be charitable, rather than requiring a specific evaluation of the circumstances of individual schools. To do otherwise would create widespread uncertainty for non-government schools regarding their status, as well as concerns regarding increased administrative burden and compliance costs.
- The independent sector believes that it is essential that the nuances and complexities surrounding the common law public benefit test be retained in any legislative definition of charity. This is particularly important for independent schools in respect of the number of beneficiaries and the consideration of both direct and indirect benefits in determining if the entity is in the public benefit.

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BACKGROUND

STRUCTURE OF INDEPENDENT SCHOOLS

Independent schools are not-for-profit organisations and are of one of the following forms:

- Schools that are completely 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. Sydney Grammar School);
- 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 assets which may be owned by an underlying church property trust. In a number of cases the company owns the school outright;
- Schools incorporated as an Association under state legislation;
- Public benevolent institutions.

Independent schools are set up and governed independently on an individual school basis. Boards of governors or committees of management 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.

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 authority on behalf of all schools within the system.

Many independent schools are faith-based schools with varying degrees of legal and administrative links to their church bodies encompassing the full spectrum of faiths across the Australian community including not only the well-known Anglican, Uniting Church and Catholic schools, but also Lutheran, Baptist, Seventh Day Adventist, Islamic, Greek Orthodox, Christian and Jewish schools. Table 1 below provides a breakdown of the affiliations of independent schools.

Many independent schools include early childhood education facilities.

Table 1: Affiliations of independent schools, 2010

Affiliation	Schools	Student FTE	%
Anglican	156	137,812	25.2%
Non-Denominational	188	72,100	13.2%
Christian Schools	136	53,757	9.8%
Catholic	64	50,702	9.3%
Uniting Church in Australia	43	49,289	9.0%
Lutheran	85	36,549	6.7%
Inter-Denominational	29	20,725	3.8%
Islamic	32	20,198	3.7%
Baptist	42	17,803	3.3%
Seventh Day Adventist	47	11,043	2.0%
Presbyterian	14	9,844	1.8%
Jewish	20	9,004	1.6%
Steiner School	42	7,515	1.4%
Pentecostal	16	6,838	1.3%
Assemblies of God	10	5,596	1.0%
Greek Orthodox	8	3,894	0.7%
Montessori School	39	3,955	0.7%
Brethren	8	4,025	0.7%
Other Catholic	8	3,469	0.6%
Other Orthodox	6	2,129	0.4%
Other Religious Affiliation*	11	5,033	0.9%
Other**	83	14,607	2.7%

*Other Religious includes Churches of Christ, Ananda Marga, Hare Krishna and Society of Friends

**Other includes special schools, international schools, indigenous schools, and community schools.

STRUCTURE OF SECTOR ADMINISTRATION

The Independent Schools Council of Australia (ISCA) is the peak national body representing the independent schools sector. ISCA's Board of Management comprises a chairman and eight members, each representing a state or territory Association of Independent Schools. ISCA's role is to liaise with the Commonwealth Government and its agencies to ensure the interests of independent schools are considered in the development of education policy. ISCA is also a key liaison point for the Commonwealth Government with the independent sector. ISCA undertakes a substantial representation role on behalf of the sector to facilitate the implementation of Commonwealth Government education policy and funding initiatives in independent schools.

Almost all independent schools in most states and in both territories choose to become members of their Association of Independent Schools (AIS). AISs provide a range of services to member schools. In addition to representing the views of the independent schools sector at state and territory level, they administer funding provided by the Commonwealth Government on a range of targeted programs, as well as providing professional development, advice and information. Many AISs also offer industrial relations services. Increasingly the Commonwealth Government and its agencies are relying on AISs to provide advice on and assistance with the

implementation of Commonwealth Government programs and policies. Recent examples have been the development of the Australian Curriculum and national testing, Smarter Schools National Partnerships and the development of the Australian Curriculum, Assessment and Reporting Authority's My School website. The majority of AISs and ISCA have charitable institution status.

Commonwealth Government Capital Grants to non-government schools are administered in each state and territory by Block Grant Authorities (BGAs). There are two BGA's in each state, one Catholic and one independent. There is a joint Catholic/independent BGA in each of the Northern Territory and the Australian Capital Territory. Some of the independent sector BGAs are charitable institutions.

CURRENT SITUATION

The proposed legislative definition of charities is of considerable concern to the independent school sector. If the draft legislation becomes law, independent schools will be moving from a situation of certainty as to their charitable status to one of considerable uncertainty. This could lead to schools facing a situation where charitable status is determined on a case-by-case basis. With this increased uncertainty there is also the strong probability that at least some independent schools will face increased compliance costs in demonstrating their eligibility for charitable status.

The certainty that independent schools have enjoyed under the common law arises from the general presumption that, *prima facie*, the element of public benefit is satisfied in the case of institutions with a predominant charitable purpose of advancement of education. The practical effect of this presumption has been that in terms of administration by the Australian Taxation Office and state and territory governments, the charitable status of independent schools has been routinely endorsed and there has been no substantive review of the charitable status of individual schools. Accordingly schools have operated with a high degree of certainty as to their charitable status and compliance costs for schools in determining and demonstrating their charitable status have been negligible.

The Charities Bill 2003 appears to reflect an objective of changing the definition of charitable institutions in certain significant respects, such as expanding the definition of charitable purposes and requiring the explicit application of the public benefit test in all circumstances, but otherwise replicating the common law.

Fundamentally the Government must recognise that the policy shift to require all entities to explicitly demonstrate public benefit will increase uncertainty for some charitable institutions at least in the short term and most probably over the longer term as well. Further, ISCA is not confident that the Bill as currently drafted will succeed in minimising uncertainty by effectively replicating, where appropriate, the common law. The common law contains complexities and nuances that are not easily captured in legislative drafting or any explanatory memorandum. Accordingly there is a strong likelihood that the proposed legislative definition will create a greater level of uncertainty than anticipated by the Government, with attendant administration costs for government and compliance costs for charities including non-government schools.

At common law, independent schools, along with other not-for-profit non-government schools, are charitable organisations. They

- are non-profit bodies;
- provide a public benefit; and
- have a dominant purpose which satisfies the common law definition of charity, that is, the advancement of education.

Independent schools, together with most of the ancillary organisations that facilitate and support their operations, have been fully recognised as charities by all levels of government in Australia. This recognition as charities over an extended period has provided stability and certainty for non-government schools in their planning and operation. Charitable status confers a range of supports from the Commonwealth Government and state, territory and local government including tax and stamp duty exemptions, FBT rebates and GST concessions.

The independent sector notes the extensive work undertaken by government agencies as background to this issue including the work of the Productivity Commission, the Australian Future Tax System Report, the Senate Inquiry and the Treasury Scoping Study.

The independent sector acknowledges the need to provide clarity around the status of charities and to ensure that the Australian Charities and Not-for-Profits Commission (ACNC) and the Australian Taxation Office (ATO) have the appropriate powers.

However, the independent sector does not consider that overturning the presumption under common law that independent schools, whose long-established purpose has been the advancement of education, should be an outcome of progressing this agenda. The independent sector believes that the Commonwealth Government must give priority to ensuring certainty for independent schools through continuing to recognise the presumption of public benefit for independent schools. Alternatively, should the Commonwealth Government proceed with the application of a public benefit test, there should be scope for independent schools to negotiate a sector-wide agreement regarding their charitable status.

CONSULTATION PAPER

PROPOSED DEFINITION OF CHARITY AND INDEPENDENT SCHOOLS

ISCA notes that it is proposed to base an Australian statutory definition of charity on the work already done on the Charities Bill 2003 and analysis in the Consultation Paper therefore follows the structure of the Charities Bill 2003. For ease of analysis, the structure of this section of this Submission will, therefore also follow the structure of the Charities Bill 2003 and Consultation Paper.

As outlined in the Consultation Paper, the core definition in the Charities Bill 2003 contained the following broad elements that an entity must meet to be a charity:

- the entity must be a not-for-profit entity;
- it has a dominant purpose that is charitable;
- it is for the public benefit;
- it does not engage in activities that do not further, or are not in aid of, its dominant purpose;
- it does not have a disqualifying purpose;
- it does not engage in, and has not engaged in, conduct that constitutes a serious offence; and
- it is not an individual, partnership, a political party, a superannuation fund or a government body.

This Submission now discusses the position of independent schools against these broad elements.

NOT-FOR-PROFIT

Independent schools are not-for-profit institutions that are set up and governed independently on an individual school basis. Independent schools are registered with the relevant state or territory education authority.

In order to be eligible for Commonwealth Government funding assistance, non-government schools must be not-for-profit. This is made clear in the *Schools Assistance Act 2008* Administrative Guidelines: Commonwealth Programs for Non-government Schools 2009-12 which state under the Commonwealth's requirements for eligibility for Commonwealth funding:

“The memorandum and articles or other instruments by which incorporation is effected must:

- a) include the power of the incorporated body to conduct a school
- b) provide for the non-profit status of the body including a requirement that any surpluses generated by the school, or recognised group of non-government schools be used for the purposes of the school or recognised group of non-government schools and not be transferred to any other activity that the body is authorised to undertake.”

Many independent schools may engage in activities that generate revenue such as uniform shops, canteens, consultancy services to other schools, or the utilisation of school facilities, but this revenue is reinvested in activities which promote the schools' dominant purpose, to wit, the advancement of education. As explicitly outlined in the extract from the Administrative

Guidelines above, any surpluses generated by the school must be used for the purposes of the school as a condition of Commonwealth Government funding.

DOMINANT PURPOSE

As outlined in the Consultation Paper, for an entity to be charitable, the Charities Bill 2003 required that it have a dominant charitable purpose. The Bill specified that an entity has a dominant purpose, if it has one or more purposes that are charitable and any other purposes of the entity further or are in aid of, or are ancillary or incidental to the dominant purpose. The Consultation Paper further proposes that the Charities Bill 2003 could be altered to reflect the common law position that the purpose or purposes of a charity must be exclusively charitable.

Independent schools have historically and continue to be established with the purpose of meeting the school education needs of their school communities. The sole purpose of independent schools is the advancement of education. The provision of school education set within a particular religious and/or educational philosophy is the *raison d'être* and predominant purpose and focus of independent schools.

A further issue canvassed in the paper, is the need for clarity between a charity's purpose and activities. Independent schools clearly are established with the charitable purpose of advancing education and the activities of independent schools can be demonstrated to be in furtherance of their charitable purpose. This would include those activities which may be incidental to educational delivery but provide revenue which is used for the advancement of education.

ISCA is concerned that a definition of charity does not result in a more restricted definition of dominant purpose than exists in common law or initially recommended by the Inquiry into the Definition of Charities and Related Organisations. As currently drafted sections 6 (1) (b) and 6 (2) (b) of the Charities Bill 2003, require any ancillary or incidental purpose to be in aid or furtherance of the dominant purpose. Further, the recent High Court decision in *Word Investments Ltd* and the subsequent Tax Office Draft Ruling have expanded the view on the commercial activities of charitable institutions, recognising the carrying on of a commercial enterprise to generate surpluses in order to further charitable purpose as congruent with the definition of charitable. ISCA would want to ensure that any definition incorporate this precedent. The common law and the recommendations of the Inquiry into the Definition of Charities and Related Organisations provide for other purposes that are not necessarily in aid or furtherance of the dominant purpose, as long as they are ancillary or incidental to the dominant charitable purpose.

FOR THE PUBLIC BENEFIT

The Consultation Paper states that the first step for determining whether an entity is charitable is that it must have a purpose that is charitable, and the second step is that it must operate for the public benefit. The Charities Bill 2003 provided that to be charitable, an entity must be for the public benefit and it will have a purpose for the public benefit if it:

- is aimed at achieving a universal or common good;
- has practical utility; and
- is directed to the benefit of the general community or to a sufficient section of the general community.

Further, the 2010 Senate Inquiry proposed that a public benefit test contain the following principles:

- there must be an identifiable benefit arising from the aims and activities of an entity;
- the benefit must be balanced against any detriment or harm; and
- the benefit must be to the public or a significant section of the public and not merely to individuals with a material connection to the entity.

There is a long held consensus that education, and in particular the provision of schooling is of public benefit. The education of the individual not only benefits that individual but the cumulative education of individuals benefits society as a whole. These benefits arise as a result of schooling playing a crucial role in developing within students the capacity for a productive and fulfilling life and for constructive participation in society by providing foundation skills (especially literacy and numeracy), knowledge and experiences. The importance of this foundation of skills, knowledge and experience, and the associated social benefits of school education, can be expected to increase rather than diminish in an increasing knowledge based community. These benefits to the individual and society are reflected in government policies relating to compulsory school attendance and the trend to extend the age range of compulsory attendance.

The OECD acknowledges the dual nature of the public benefits of education stating ‘The economic benefits of education flow not only to individuals but also to society.’¹

ISCA considers that were the presumption of public benefit to be reversed, it is likely that independent schools will be judged to meet the requirements of the first two elements of the Public Benefit test.

- In regard to “achieving a universal or common good” there is a community consensus about the desirability of young people receiving school education, with this most clearly indicated by the legislative requirement for compulsory schooling or education.
- The “practical utility” of schools as a means of providing education to young people and thus advancing education would seem to be clearly established. This is further re-enforced by current state and territory government requirements for the registration of schools.

The third element of the public benefit test: the requirement for the entity to be “directed to the benefit of the general community or a sufficient section of the general community” and the related provision that “beneficiaries must not be numerically negligible” is dealt with below.

Public

ISCA is concerned that section 7(1) (c) of the Charities Bill 2003 together with section 7(2) establishes a new, higher threshold test of public benefit than currently exists in the common law. Under the common law a charitable purpose is required to benefit the “community or a section of the community”. The inclusion of the word “sufficient” in section 7 (1) (c) is suggestive that a specific number of members of the community need to benefit from an institution before it is considered to be charitable.

Similarly, ISCA is concerned by the inclusion of section 7 (2): the requirement that beneficiaries “*must not be numerically negligible*”. This provision appears to establish “not numerically negligible”

¹ OECD Education at a Glance 2011

as a binding test of whether an entity is in the public benefit, which appears to be contrary to the common law. Gino Dal Pont in *Charity Law in Australia and New Zealand* states:

*“It has been suggested that the phrase “section of the community” dictates two requirements, first that the possible beneficiaries or objects of disposition ‘must not be numerically negligible’ and secondly, that the ‘quality which distinguishes them from other members of the community, so that they form by themselves a section of it must be a quality which does not depend on their relationship to a particular individual’. At the outset it must be noted, however, that the first such requirement is unlikely of itself to be a disqualifying factor, but rather is more likely to provide a useful indication of the absence of the second requirement.”*²

At common law a “section of the community” can be limited by reference to charitable purpose, geographic area or other criteria so long as this is consistent with the charitable need being pursued for the public benefit. Further in common law both direct and indirect benefits are considered in determining if the entity is in the public benefit.

ISCA believes that it is essential that these nuances and complexities surrounding the common law public benefit test be retained in any legislative definition of charity. In this context, ISCA is concerned that the Bill as currently drafted is ambiguous in the guidance it provides administering agencies and the Courts on the role of the existing common law in interpreting its provisions. ISCA believes that any legislation defining charity should unambiguously direct administering agencies and the Courts to use the common law in force at the time of the passage of the legislation in interpreting its provisions, except in those instances where the common law is inconsistent with the express provisions of the Act.

These issues are of particular importance in terms of the possible impact of the draft legislation on independent schools given the nature of Australia (for example geographical isolated communities) and the particular characteristic of education in the independent sector (schools serving particular educational philosophies, small religious groupings or special schools assisting students with disabilities or students at risk).

Other characteristics of independent schools should also be considered:

- Compared to some other charitable activities, the relationship between schools and individual direct beneficiaries is not transient and can extend over period of up to 13 years, with this limiting the absolute number of direct beneficiaries at one time or over a given period.
- School enrolments are also limited at any given time by existing facilities, infrastructure and staffing. Schools need to optimise enrolment levels to ensure a balance between financial viability without compromising educational outcomes. It is important to recognise that decisions relating to school size, curriculum offerings and school finances are the outcomes of the particular operational environment of most independent schools, whereby the individual school must ensure the financial and educational viability of the school.
- A significant number of independent schools have relatively small enrolments. Some 13 per cent of independent schools have an enrolment of 50 students or less, while a further 39 per cent have enrolments of less than 200 students.

² Gino Dal Pont, *Charity Law in Australia and New Zealand*, Oxford University Press, Australia, 1999, page 16. Emphasis added.

Important among smaller schools are:

- Faith-based schools. In Australia some faiths have a relatively small overall following. In other cases the faith community in a particular town or district, especially in regional centres or small towns, may have a small population. Schools serving these faith communities generally have low enrolments. It would be inappropriate and contrary to the Australian Constitution for Commonwealth legislation to indirectly discriminate against these religions by inhibiting the capacity for these faith communities to establish and maintain schools by withholding charitable status because of the size of the communities they serve.
- Indigenous community schools. Some independent sector community indigenous schools serve remote locations with small populations. While the school might have small enrolments, in some instances they are the only form of locally based school provision.
- Special schools. Of the 63 independent schools with enrolments of 25 or less students, 20 are special schools, with some having fewer than 10 students. These schools are critical to parents having choice in the education of their children with disabilities or other special needs and to the quality of education provision for these students. They can also be important centres of expertise, which support teaching and learning for students with disabilities and special needs in regular school settings.
- Schools with a specific education philosophy, such as Montessori and Rudolf Steiner Schools. A number of schools based on Montessori and Rudolf Steiner philosophies and located in smaller population centres have quite small enrolments.

In light of these concerns ISCA considers that section (7) (1) (c) should be amended to remove the word “sufficient” and that section 7 (2) be deleted. Considerations regarding “numerically negligible” would be sufficiently addressed by the requirement to benefit a “section of the community”. Further, ISCA considers that the legislation contain a direction that the common law existing at the time of the passage of the legislation be used in interpreting its provisions except in circumstances where the common law is inconsistent with the express provisions of the Act.

The Consultation Paper makes specific reference to the Board of Taxation, in its review of the Charities Bill 2003, recommendation that ‘sufficient section’ be defined as one which is not ‘numerically negligible’ compared with the size of that part of the community to whom the purpose would be relevant and notes that this recommendation was made because of concerns that the wording could exclude organisations such as independent schools in geographically isolated communities.

Further, the sector strongly considers that the public benefit conferred by the advancement of education rests not only with the individual but also with the broader Australian community. Details of the public benefit conferred on both the general community and the individual by schools generally and independent schools particularly are outlined in detail further in this Submission.

Benefit

The Consultation Paper notes that the Board of Taxation considered that the public benefit test in section 7 of the Charities Bill 2003 was adequate and that further clarifications could be made in the explanatory material. The issue at stake for independent schools in the section of the Consultation Paper is whether legislative definitions should provide guidance as to whether an entity is for the public benefit (such as in Scotland, Ireland and Northern Island) or whether a non-statutory approach was preferable, such as the Charity Commission for England and Wales providing extensive guidance on the meaning of public benefit.

The arguments put forward in the Consultation Paper in favour of a non-statutory approach is that it would provide flexibility, certainty and a capacity to accommodate the diversity of the charities sector. The experience of independent schools in England operating under the Guidance provided by Charity Commission clearly did not provide ‘certainty’ and in fact contributed to significant and ongoing uncertainty for independent schools and their school communities.

It is critical that, were the presumption of public benefit to be reversed, any guidance provided as to whether an entity is for the public benefit should not contribute to uncertainty for independent schools or the necessity of protracted legal activity.

Presumption of Public Benefit

As noted in the Consultation Paper, currently the common law applies so that entities within the first three heads of charity are presumed to be providing a public benefit. The Charities Bill 2003 sought to overturn the presumption of public benefit for the first three heads of charity requiring that all entities seeking approval as a charity meet a public benefit test. The stated reason in the Consultation Paper for the need to overturn the presumption for these first three heads is the difficulties experienced by government authorities in seeking to regulate and enforce the law must rebut the presumption of public benefit which can often be administratively difficult and costly.

ISCA would argue that for charities engaged in the advancement of education, particularly schools, the public benefit is self-evident. (This argument is outlined extensively further in this Submission). There should be no assumption that the approach of the Charities Bill 2003 which overturned the presumption of public benefit for the first three heads of charity should be accepted without further extensive examination and debate.

Other options for addressing the difficulties experienced by government authorities in regulating and enforcing the law should be considered, with the drastic measure of overturning the presumption of public benefit to achieve that purpose being the last, rather than the first resort.

The vast majority of charities established under the first three heads of charity operate in a long-established and broadly recognised public benefit environment, including schools. Seeking to address a recognised government administrative issue, albeit without any suggestion that it is a significant, or sector wide problem, by impacting on thousands of recognised charitable entities by questioning their legitimacy could be seen as overkill and may be the reason why previous attempts to clarify the status of charities in Australia have been unsuccessful.

Statements in the Consultation Paper to the effect that altering the presumption of public benefit may not increase compliance costs, create additional work or create significant issues for the

charities sector provides little comfort to charities. The experiences of independent schools in England and Wales have provided a salutary example of the seismic potential of these changes particularly if vested interests are allowed to influence public policy outcomes.

The Consultation Paper moots the option of the ACNC developing guidance for entities seeking to establish their charitable status. While ISCA recognises the benefits of flexibility around this approach, it is concerned that there needs to be clarification of the accountability of the ACNC, including how its decisions would be open to scrutiny. It would be unfortunate if Australia did not note the experience of independent schools in England and Wales whereby certain long-established charitable entities were forced to resort to lengthy and expensive legal action in response to inappropriate interpretation of roles and powers.

If the ACNC were to subject individual schools to an explicit and individual assessment of their public benefit, compliance costs would be increased significantly for the affected schools. An objective assessment of public benefit would require a very detailed evaluation of a school's operations and financial structure, and also a more sophisticated understanding of the cost of government school provision. If the assessment were to rely on crude indicators, such as fee levels and arbitrary cut off points, it would inevitably result in unintended inequities and anomalies and is also likely to become frozen in time, unresponsive to the continuously changing demands of what constitutes quality school provision. Schools operate in a dynamic environment driven not only by changing community expectations and demographics, but also by governments' education policies and reform agendas.

More generally the sector as a whole would face increased uncertainty because of the need for each school to continuously review its circumstances making fine judgements as to whether it continued to satisfy the requirements for charitable status. This would have a significant impact on the operation of schools, reducing flexibility and affecting the autonomy of schools to make decisions in the interests of their school communities. It would also significantly deflect the focus and energy of the school from its core purpose of educating children.

The majority of independent schools provide scholarship programmes, fee remissions and discounts to widen the accessibility of families to schools of their choice. The scope for schools to do this is obviously constrained by financial viability and by the paradox that the more they offer scholarships and discounts, the higher the fee levels for other students, tending to reduce the accessibility of the school to the general community.

It is essential that the legislation allow administering agencies to automatically recognise registered non-government schools as a class of institution that satisfies the public benefit test. To do otherwise would raise uncertainty and compliance costs within the non-government schools sector, undermining the plurality of school provision so valued by the Australian community and detracting from the capacity of non-government schools to provide a quality education. It would also increase costs to administering government agencies without a commensurate increase in the quality of education or community benefits.

ACTIVITIES TO BE IN FURTHERANCE OF CHARITABLE PURPOSE

The Consultation Paper notes that under the common law, both the activities and purposes of an institution need to be considered in determining whether the entity is a charitable institution. The Charities Bill 2003 requires that a charity not engage in activities that do not further, or are not in aid of, its dominant purpose. Consideration is being given to whether the term 'dominant

purpose' should be replaced by differing language, for example, 'exclusively charitable purpose' and that this test may also need to be altered to reflect this requirement.

The activities of independent schools and their ancillary organisations are almost entirely directed to their dominant purpose of providing school education. Activities outside this sphere are of an ancillary and incidental nature, and involve providing related services to the school community or to raising additional income to improve the quality of education provided by the school, to reduce its reliance on fees for service or to enable greater provision of scholarships and bursaries. Much of this fund raising activity is characterised by a significant voluntary input by the parental body and school community.

ISCA is concerned about these provisions because of the possible implications for various ancillary activities of independent schools such as the operation of uniform shops, canteens, the provision of consultancy services to other schools in, say, areas of curriculum or professional development, school fetes, quiz evenings or the utilisation of school facilities outside of school hours. It also fosters a partnership between the school and the wider community which has a two-fold benefit. The immediate school community gains from the input from the wider community, while the wider community benefits from the experiences and facilities of the school. Fundraising of this nature is common to both government and non-government schools.

Further, as noted earlier in this Submission, any revenue generated by schools must be used for the purposes of the school. This is already a condition of Commonwealth Government funding.

With regard to the Charities Bill 2003, ISCA is uncertain as to the purpose of section 4 (1) (c) and is concerned that it will be a source of ambiguity. It would appear that the section is directed at re-enforcing and/or clarifying the requirement that charitable entities have a dominant charitable purpose. ISCA considers that this requirement would be adequately addressed in a modified definition of dominant purpose at section 6 and that section 4 (1) (c) should be deleted. Specifically, ISCA is concerned that the focus of provision is the activities, rather than the purposes, of the entity. The Word Investments Ltd decision should be used as a basis for any modified definition as discussed earlier in this Submission.

DISQUALIFYING ACTIVITIES

The Charities Bill 2003 refers to disqualifying activities which include the activity of engaging in illegal activities and political activities that are more than ancillary or incidental.

With regard to illegal activities, the Charities Bill 2003 included as a core requirement, that an entity will not be a charity if it engages in, or has engaged in conduct (or omits to engage in conduct) constituting a serious offence. A new regulatory regime is being proposed that will allow the ACNC to impose penalties as an alternative to the deregistration of a charity which has engaged in inappropriate conduct which will be subject to separate consultation.

Again ISCA is concerned that this provision is specified in terms of activities rather than purposes. It is clearly appropriate that charitable institutions do not have illegal purposes, but this would appear to be satisfactorily addressed in section 8 (1), which defines disqualifying purposes.

In the modern context a plethora of legal requirements surround the activities of any entity. Breaches of certain of these requirements can constitute a serious offence, for example

requirements surrounding occupational health and safety. ISCA believes that a charitable organisation which breaches such legal requirements in conducting its day-to-day activities directed to its dominant purpose should not be excluded from charitable status. In many instances entities inadvertently commit such offences because of a lack of expertise or knowledge. ISCA believes that appropriate sanctions against such offences already exist under these legal frameworks and do not need to be further re-enforced through the loss of charitable status. The current provision is particularly harsh in that it indefinitely excludes an entity from charitable status.

With regard to political advocacy, the decision by the High Court in the Aid/Watch decision has removed ‘attempting to change the law or government policy’ as a political activity for the purposes of a disqualifying activity. This decision is relevant for the independent sector peak bodies and ensures that the role of ISCA and AISs in advocating on behalf of independent schools with the Commonwealth Government and state and territory governments does not compromise their charitable status.

TYPE OF ENTITY

The Charities Bill 2003 provides that a charity cannot be an individual, a political party, a superannuation fund or a government body. The effect is that a charity can be structured in a number of legal forms such as a trust, or an incorporated or unincorporated body.

Independent schools have a diversity of structures and legal frameworks which would appear to continue to be supported under the proposed arrangements, an outcome which is supported by ISCA. However, ISCA notes the Treasury Consultation Paper “Better Targeting of Not-For-Profit Tax Concessions” proposes that charities, including non-government schools, may be required to restructure their entity to facilitate ease of administration and transparency of activities for tax purposes.

CHARITABLE PURPOSES

The Consultation Paper comments that the Board of Taxation noted that there were many suggestions for clarifying or expanding the definition of charitable purpose in the draft Bill. It is suggested that a comprehensive list of permissible charitable purposes will provide greater certainty and clarity for the sector and the public.

The independent sector suggests that providing a more comprehensive list of permissible charitable purposes may provide an alternative to removing the presumption of public benefit for long established and legitimate charitable entities, including non-government schools.

PEAK BODIES

ISCA and the majority of state and territory AISs have charitable institution status. The purpose and activities of the sector peak bodies are outlined in the Background Section of this Submission.

It is anticipated that were the presumption of benefit reversed, these independent peak bodies would be able to demonstrate their charitable status through the public benefit for the general community and a sufficient section of the general community through the advancement of education and their roles as advocates on behalf of independent schools to further their charitable activities.

IMPLICATIONS OF THE LOSS OF CHARITABLE STATUS

At present independent schools are exempt from income tax, as a result both of their charitable status and their status as public education institutions. The financial impact on independent schools as a result of the loss of charitable status would crucially depend, therefore, on whether changes are also made to the specific provisions in the Income Tax Act relating to public education institutions. ISCA notes that the Report of the Inquiry into the Definition of Charities and Related Organisations suggested the possibility of changes in this area also.

Liability for income taxation would have a significant impact on the capacity of independent schools to develop an appropriate capital infrastructure to support teaching and learning. Operating surpluses play a crucial role in financing capital infrastructure development within schools, the surplus either being used directly to finance capital expenditure or alternatively to repay debt. The demands on schools, both new and existing, for ongoing capital development is considerable as a result of enrolment growth, the need to replace infrastructure, to provide for information technology, meet safety and regulatory requirements, and support a more diverse curriculum which requires specific investment in equipment and facilities (for example, VET, science, drama).

Loss of charitable status would also have implications for fringe benefit liability, putting upward pressure on school costs. It would also have implications for the GST liability of irregular fund raising activities (such as fetes) undertaken by non-government schools. The GST legislation provides specific arrangements for charitable institutions and government schools. Loss of access to such provision would be significant in terms of both the returns from vital fundraising activities and additional compliance costs.

In the context of the states and territories adopting the Commonwealth definition, the impact of the loss of charitable status would vary across states and territories. In some states and territories exemptions for rates, payroll tax, stamp duty and concessions for utilities are a function of charitable status and in other cases the provisions relate specifically to schools. Loss of these types of concession could have very significant implications for the operating cost structure of individual schools and hence their financial viability.

As the majority of independent schools are autonomous organisations, set up and governed on an individual basis, they cannot rely on overarching education systems for financial or administrative support. Schools need to be able to make long-term plans and provisions to ensure their ongoing quality and viability. Schools operate in a dynamic environment which is influenced not only by changing societal expectations, demographics and world financial markets, but also by changing government policy. The Commonwealth Government's education reform agenda has a significant impact on the operations of individual independent schools, including through non-government schools' funding agreements with the Government. Any additional levels of uncertainty can have a significant impact on the operating environments for independent schools.

A summary of the tax and related concessions at state/territory and Commonwealth Government level conferred on schools by their charitable status is at Appendix 1.

PUBLIC BENEFIT AND INDEPENDENT SCHOOLS

Independent schools have contributed to the advancement of Australian society virtually since the establishment of European settlement. While the independent school sector believes that the contribution of independent schools to the public benefit is already widely acknowledged and established in the Australian community, it is timely to highlight the contribution of the sector to the advancement of education in the context of this Submission and the consideration by Government of a definition of charity.

As noted earlier the public benefit of the advancement of education can be conferred on the public as a whole through the education of its citizens individually and conferred on the individual who benefits from the advantages conferred from an education.

All schools, government, Catholic and independent contribute to the public benefit by providing school education to Australian students. Schools provide a benefit to individuals by equipping students with skills and knowledge to prepare them for life and employment, and a benefit to society by providing students with skills and knowledge to contribute to the social and economic development of the nation.

RECOGNITION BY GOVERNMENTS

‘The substantial investment governments make in education is driven by a human capital agenda which recognises that national and economic productivity is dependent on the level of skills and knowledge of the population. Individual success and well-being are also connected to education outcomes’.³

The role of non-government schools in contributing to the public benefit derived through education is acknowledged by both the Commonwealth Government and state and territory governments through their funding support for non-government schools.

Australian school education is supported by three major funding partners – the Commonwealth Government, state and territory governments and the families of students. In the government school sector, the state or territory government that owns the schools contributes most of the funding. In the independent sector, most funding is contributed by parents.

All school students, whether they attend government, Catholic or independent schools, receive public support for their education from their state or territory government and the Commonwealth Government.

Students in government schools receive the most public funding, and the main source of this funding is the state or territory government that owns the school they attend. Students in non-government schools receive a lower level of public funding, and the main source of this support is the Commonwealth Government. Further information on the levels of funding is available at Appendix 2.

In independent schools the cost of education and its concomitant contribution to the public benefit is primarily met by parents and the school community. Overall, the independent sector depends mainly on parents to fund schools, with 55 per cent of its income coming from private

³ Public Policy Institute, Australian Catholic University, Issues Paper 1: Equity and Education, April 2011

sources, although this amount varies greatly from school to school.⁴ Through fees and donations, parents and donors nationally provide 80 per cent of capital funding for independent school buildings, grounds and equipment.⁵ This parental contribution frees up scarce government resources to allocate to other priorities and reduces the need for government revenue-raising. Government resources allocated to independent schooling represents a highly efficient and effective use of government resources through its capacity to leverage private contributions to education and its social and economic benefits.

Parental and community investment in schooling is estimated to be 16 per cent of total expenditure on schooling in Australia. In the non-government sector, the decision by parents to make a significant after tax contribution to their children's schooling is made by choice and represents a partnership between non-government schools and parents which provides a major contribution to the funding effort for Australian schools. Based on Productivity Commission data, ISCA calculates that the total savings in government recurrent expenditure from students attending non-government schools was some \$7.9 billion in 2008-09. This is up from \$7 billion in 2007-08.

MELBOURNE DECLARATION ON EDUCATIONAL GOALS FOR YOUNG AUSTRALIANS

All Australian schools and systems must agree to support the achievement of the Melbourne Declaration on Educational Goals for Young Australians. The Melbourne Declaration sets out the goals to improve educational outcomes that are central to the nation's social and economic prosperity and will position young people to live fulfilling, productive and responsible lives.

The Melbourne Declaration was made by all Australian Education Ministers in December 2008 and explicitly recognises the importance of the contribution of independent schools in achieving these goals. The Declaration makes clear that it is recognised by all Australian Ministers for Education that the benefits from education to Australian society are delivered through co-operation between government, Catholic and independent schools, stating "As signatories to the Melbourne Declaration, Australian Education Ministers seek to achieve the highest possible level of collaboration with the government, Catholic and independent school sectors and across and between all levels of government."⁶

The Funding Agreement between the Commonwealth Government and non-government school education authorities obliges non-government schools to support the achievement of the Educational Goals for Young Australians.

COAG GOALS

Likewise non-government schools are obliged through their Funding Agreement with the Commonwealth Government to support the Council of Australian Governments (COAG) outcomes for schooling which are set out in the National Education Agreement:

- All children are engaged in and benefiting from schooling;
- Young people are meeting basic literacy and numeracy standards, and overall levels of literacy and numeracy achievement are improving;

⁴ DEEWR Financial Questionnaire 2009

⁵ This figure excludes the one-off funding provided under the Building the Education Revolution

⁶ Melbourne Declaration on Educational Goals for Young Australians, December 2008, Ministerial Council on Education, Employment, Training and Youth Affairs

- Australian students excel by international standards;
- Schooling promotes social inclusion and reduces the educational disadvantage of children especially Indigenous children;
- Young people make a successful transition from school to work and further study.

Non-government schools must also support the following targets agreed by COAG:

- Lift the year 12 (or equivalent) attainment rate to 90% by 2020;
- Halve the gap for Indigenous students in reading, writing and numeracy within a decade;
- At least halve the gap for Year 12 (or equivalent) attainment rates between Indigenous and non-Indigenous students by 2020.

The Melbourne Declaration and the COAG outcomes and targets provide definitive recognition by governments of the contribution to the public benefit of non-government schools. These documents acknowledge the role and contribution of non-government schools to the achievement of the Educational Goals, outcomes for schooling and to addressing educational disadvantage.

RECOGNITION BY THE AUSTRALIAN PUBLIC

The public benefit of independent schools is increasingly being validated by the strength of enrolment growth within the sector. The independent school sector is now the fourth largest school education provider in Australia and at secondary level is the largest provider of schooling services.⁷

While the independent sector accounts for 16 per cent of total school enrolments, the proportion of these enrolments varies between primary and secondary levels of education. The proportion of enrolments in independent schools is lower for primary schools with independent primary schools having around 11 per cent of total primary enrolments. The share of enrolments in independent schools rises to around 17 per cent for junior secondary and 19 per cent for senior secondary. While the independent sector has proportionally less primary enrolments, it does have a large proportion of combined primary and secondary schools representing 62 per cent of schools in the independent sector.⁸

Enrolments in independent schools have grown steadily since the 1970s. According to Australian Bureau of Statistics (ABS) data, in 2010 independent schools accounted for 14 per cent of total student enrolments compared to 4 per cent in 1970⁹. Full time enrolments have increased from around 114,000 in 1970 to over 491,000 in 2010.

Analysis of enrolment growth patterns in the independent sector shows that enrolment growth has occurred predominantly in schools drawing students from a lower socio-economic profile. Analysis of the socio-economic scores of the 195 new schools¹⁰ which opened during the eleven year period 2000 to 2010 shows that 70 per cent have an SES score of 100 or less. An explanation of the Commonwealth Government's needs-based funding model for non-

⁷ ABS *Schools, Australia 2010* and Non-Government School Census 2010 – independent sector figures include independent Catholic enrolments

⁸ DEEWR Non-Government School Census 2010 - includes independent Catholic schools

⁹ ABS data excludes independent Catholic enrolments

¹⁰ This figure does not include schools for which an SES score was not available.

government schools is at Appendix 4. Most of these new schools aim to operate with low fees, and their establishment has contributed to the increasing diversity of the sector. These enrolment growth trends show that the independent sector is making an increasing contribution to the education of Australian school students and is also providing school education to an increasingly diverse range of students. The rise in enrolments clearly demonstrates the strong support of Australian parents for independent schools and indicates the growing importance of the sector as a provider of education to the community as a whole.

RESEARCH ON PUBLIC BENEFITS OF SCHOOLING

The benefits to the general community and the individual from education are well documented. There is extensive national and international research to support these benefits. OECD research strongly supports the benefits to both the individual and the flow-on benefits to the nation for each additional year of school and tertiary education, noting that 'The economic benefits of education flow not just to individuals but also to governments'. These benefits are not only economic, but also across most social and community aspects of society. In addition, data from the Australian Bureau of Statistics highlights the particular social and economic benefits to broader Australian society from independent schools. Full details of this research are provided at Appendix 3.

CHARACTERISTICS OF THE INDEPENDENT SECTOR

INDEPENDENT SECTOR DIVERSITY

Enrolments of special needs students in independent schools are increasing annually with the major constraint on enrolment growth being additional resourcing to adequately support their needs.

The role of the independent sector in providing for students with disabilities has increased dramatically in recent years. In 2010, 12,170 students with disabilities enrolled in independent schools, an enrolment increase of 89 per cent since 1999. Around 79 per cent of these students were enrolled in mainstream schools and around 21 per cent enrolled in special schools which provide alternative educational settings for students with high-level needs.

The independent sector also caters for students with severe social, emotional and behavioural issues through its Special Assistance Schools. These schools serve young people who have disengaged from education and whose needs are not met by mainstream education. They are often referred from community services, juvenile justice and other schools both government and non-government. Special Assistance Schools have developed specially adapted programs and structures designed to re-engage students in education and prepare them for further training and employment.

Independent schools are also enrolling increasing numbers of students from a language background other than English. Since 2006, the number of students in independent schools eligible for assistance under the Commonwealth Government's English as a Second Language New Arrivals Program has increased by 43 per cent.

The independent schooling sector provides a significant contribution to educating students from Australia's rural and remote areas, where the high costs of schooling provision pose a challenge for governments and school communities. Many people are surprised to learn that there are independent schools outside of cities and larger regional centres. While 70 per cent of independent schools are located in metropolitan areas, 27 per cent are in provincial areas and 3 per cent in remote areas.¹¹ This is broadly consistent with the location of the Australian population generally.

Many students from rural and remote areas attend boarding schools in the state and territory capital cities or larger regional towns. Alternatively, rural and remote students may board elsewhere but attend an independent school as a day student. Others attend independent schools in their local areas or choose the option of distance education. The independent sector dominates boarding school provision in Australia, with some 152 boarding schools and about 16,830 boarding students.¹²

There are over 9,000 indigenous students in independent schools. There are 31 independent schools with indigenous enrolments of more than 50 per cent. There is a strong commitment and innovative approach towards meeting the specific educational needs of indigenous students across a range of settings and types of independent schools. Some students are within local independent schools, others attend schools that provide special programs for indigenous students, and some students attend boarding schools, while others attend indigenous schools or

¹¹ MCEECDYA Geographic Location Database 2009

¹² DEEWR Non-Government School Census 2010 - includes independent Catholic enrolments

indigenous community schools that cater exclusively for indigenous students. Many schools provide boarding scholarships.

The majority of indigenous students in the sector are located in Queensland (34 per cent), New South Wales (23 per cent), Western Australia (16 per cent), and the Northern Territory (14 per cent).¹³

Independent schools draw their enrolments from the full spectrum of socio-economic status. There is sometimes a perception that independent schools only educate students from wealthy families. In fact, the socio-economic profile of individual schools varies greatly across the sector, with some schools drawing students from quite diverse backgrounds while at other schools there may be a greater concentration of students from low SES or higher SES backgrounds.

Independent schools attract students from all income groups and trends in enrolments also indicate that the fastest growing segment of the sector is in low fee schools, providing access to independent schools for lower income families. About a third of independent school enrolments come from families earning less than average full time earnings.¹⁴

Most independent schools provide scholarships, part-scholarships and fee relief for disadvantaged students to give them the opportunity to access a quality education of their choice. These include students from low socio-economic backgrounds or those who may be disadvantaged for other reasons. For many independent schools servicing remote communities, the capacity of parents and the local community to raise private income for schooling is minimal. These schools rely almost entirely on support from government and philanthropic support.

Independent schools also take a positive role within the broader community. Generally independent schools take a constructive role in sharing expertise and promoting improvements in the quality of education across all school sectors. Many schools seek to foster a strong community service ethic among their students, with students undertaking fundraising activities in support of other charities, assisting as volunteers in appeals run by other charities or undertaking direct community service.

ACCOUNTABILITY AND REGULATORY ENVIRONMENT

Independent schools are accountable to the Commonwealth Government and state and territory governments and their school communities.

Independent schools must meet the criteria established by their state or territory government for registration as a school and for their accreditation for credentialing of students. School registration is reviewed on an ongoing basis, which ensures that the school's curriculum and governance complies with state or territory government requirements.

Independent schools are often accused of not being as accountable for government funds as government schools are. In fact independent schools have a greater range of accountabilities than any other type of school in Australia due to the complex mix of their responsibilities to stakeholders, governments, authorities and their legal obligations as incorporated bodies.

As well as the Commonwealth Government and state and territory government education authorities, independent schools are bound by a number of other legal requirements associated

¹³ DEEWR Non-Government School Census 2010 - includes independent Catholic enrolments

¹⁴ ABS average gross weekly earnings of \$1,305 for 2005-06

with their operations. Unlike government schools where there is no individual financial accountability, independent schools are subject to significant financial scrutiny. For example, as companies limited by guarantee or as incorporated associations, independent schools are accountable to the Australian Securities and Investments Commission, or to their state or territory registrar of associations. They must submit audited financial statements to these bodies which are available for public scrutiny. They are also subject to regulation by the Australian Taxation Office. Independent schools must provide a Financial Questionnaire to the Commonwealth Government Department of Education, Employment and Workplace Relations. The Financial Questionnaire is an annual collection of financial income, expenditure and liabilities from all non-government schools receiving Commonwealth Government general recurrent grants utilising data from audited financial statements.

It should be noted that the same conditions and requirements apply to all independent schools irrespective of their level of government funding, and that government funding represents only a portion of the income of independent schools.

Independent schools are also accountable to their stakeholders, including school Boards, students, parents and the school community – who are also fee-paying partners – founders and other financial supporters.

CONCLUSION

A priori, independent schools, along with other not-for-profit non-government schools, unambiguously satisfy the fundamental public benefit test of charity – they provide significant public benefits in terms of the social benefits of children receiving a school education and the substantial fiscal savings to the government. It is appropriate and reasonable that, as is substantially the case with the current common law treatment, non-government schools are as a class of institution deemed to be charitable, rather than requiring a specific evaluation of the circumstances of individual schools. To do otherwise would raise uncertainty and compliance costs within the school sector, together with the costs to the administering agency without a commensurate increase in community benefits.

The independent sector appreciates the Government's imperatives to provide clarity around the status of charities and to ensure that the Australian Charities and Not-for-Profits Commission (ACNC) and the Australian Taxation Office (ATO) have the appropriate powers. However, the independent sector does not consider that overturning the presumption under common law that independent schools, whose long-established purpose has been the advancement of education, should be an outcome of progressing this agenda.

The independent sector believes that the Commonwealth Government must give priority to ensuring certainty for independent schools through continuing to recognise the presumption of public benefit for independent schools. The sector does not believe that overturning the presumption of public benefit for independent schools is a necessary consequence of defining charitable entities or clarifying associated statutes and entitlements. Other options for addressing the difficulties experienced by government authorities in regulating and enforcing the law should be considered, with the drastic measure of overturning the presumption of public benefit being the last, rather than the first resort.

Should the Commonwealth Government proceed with the application of a public benefit test, there should be made available, at the earliest opportunity, scope for independent schools to negotiate a sector-wide acknowledgement of their charitable status. This sector-wide recognition should be made available to all non-government schools which are both registered as schools with state and territory education authorities (or proceeding through pre-registration processes) and not-for-profit.

Fundamentally the Government must recognise that the policy shift to require all entities to explicitly demonstrate public benefit will increase uncertainty for some charitable institutions at least in the short term and most probably over the longer term as well. Accordingly there is a strong likelihood that the proposed legislative definition will create a greater level of uncertainty than anticipated by the Government, with attendant administration costs for government and compliance costs for charities.

The independent school sector is anxious that the Commonwealth Government heed the experiences of the Charity Commission for England and Wales in respect of independent schools under their jurisdiction. It is critical that Australia benefit from this precedent and avoid the pitfalls of the Charity Commission's approach to recognising charitable status.

As summed up by the Independent Schools Council of the UK in their Press Release of 14 October 2011, "The Commission's former approach, now discredited by the Tribunal, had the effect of reducing the public benefit of independent schools to a crude calculation of fees and bursaries. The Tribunal has recognised the crucial independence of schools to pursue a panoply

of public benefit strategies, free from the apprehension of failing to measure up to an artificial arithmetic benchmark.”

This submission has been prepared by the Independent Schools Council of Australia on behalf of our member associations:

Association of Independent Schools of the ACT Inc.
The Association of Independent Schools of New South Wales Ltd.
Association of Independent Schools of the Northern Territory Inc.
Independent Schools Queensland
Association of Independent Schools of South Australia
Independent Schools Tasmania
Independent Schools Victoria
Association of Independent Schools of Western Australia Inc.

Bill Daniels
Executive Director
Independent Schools Council of Australia

Canberra
8 December 2011



Independent Schools
Council of Australia

APPENDIX 1: TAX AND RELATED BENEFITS FROM CHARITABLE STATUS

Schools qualify for a number of tax and related concessions, at State and Commonwealth level (see table below). In some cases, they qualify in their own right (i.e., as schools), while in other cases the exemption is dependant on their 'charitable' status.

For example, Commonwealth income tax exemption and FBT rebate concessions depend on 'charitable' status, whereas GST-free status applies to 'education courses'.

In certain States and Territories, exemptions apply to not-for-profit schools whether charitable or not, while others depend on their 'charitable' status.

	Income Tax Exemption	FBT rebate	GST-free
Commonwealth	Charitable institution or public education institution	Charitable institution	<i>Education courses</i>

	Payroll Tax Exemption	Stamp Duty Exemption	Land Tax Exemption
ACT	<i>Educational purpose</i>	<i>School</i>	<i>School</i>
NSW	<i>School</i>	<i>Promotion of education</i>	Educational institution
NT	<i>School</i>	<i>Charitable institution</i>	<i>N/A</i>
Queensland	<i>Charitable institution</i>	<i>Charitable institution</i>	Charitable institution used for education purposes
SA	<i>School</i>	<i>Charitable purposes</i>	Educational institution
Tasmania	<i>School</i>	<i>Educational purpose</i>	Educational purposes
Victoria	<i>School</i>	<i>Educational purpose</i>	Charitable institution and used for charitable purposes
WA	<i>School</i>	<i>Charitable or similar purposes</i>	Bona fide educational institution

A more detailed summary is on the following page.

Tax	Benefit
Income Tax	<ul style="list-style-type: none"> 'charitable institution or public education institution' generally exempt from income tax on assessable income; exemption from tax return filing obligations (s50-5 <i>Income Tax Assessment Act 1997</i> (Cth)); entitled to obtain tax refund of franking credits from franked distributions received by the charity (s207-115 <i>Income Tax Assessment Act 1997</i> (Cth)).
Fringe benefits tax (FBT)	<ul style="list-style-type: none"> 'charitable institution' qualify for FBT rebate @ 48% (capped at annual 'grossed up' taxable value of \$30,000 per employee) (s65J <i>Fringe Benefits Tax Assessment Act 1986</i> (Cth)):
Payroll Tax exemption	<ul style="list-style-type: none"> charitable institution <ul style="list-style-type: none"> ...and exclusively in respect of a non-tertiary educational institution s14(2)(c)(ii)(B) <i>Payroll Tax Act 1971</i> (Qld); schools <ul style="list-style-type: none"> educational purpose s48 <i>Payroll Tax Act 2011</i> (ACT); wages paid by a non-government not-for-profit school (up to and including secondary level of education) s49 <i>Payroll Tax Act 2007</i> (NSW); s49 <i>Payroll Tax Act 2007</i> (Vic); s49 <i>Payroll Tax Act</i> (NT); s49 <i>Payroll Tax Act 2009</i> (SA); s49 <i>Payroll Tax Act 2008</i> (Tas); s40(2)(f) <i>Pay-roll Tax Assessment Act 2002</i> (WA);
Stamp Duty exemption	<ul style="list-style-type: none"> charitable institution <ul style="list-style-type: none"> s4F <i>Stamp Duty Act</i> (NT); s414 <i>Duties Act 2001</i> (Qld); charitable or religious purposes s71(5)(j) <i>Stamp Duties Act 1923</i> (SA); charitable or similar public purpose s95 <i>Duties Act 2008</i> (WA); schools <ul style="list-style-type: none"> promotion of education s275 <i>Duties Act 1997</i> (NSW); school s64 <i>Duties Act 1999</i> (ACT); educational purpose s45 <i>Duties Act 2000</i> (Vic), charitable or educational purpose s53(n) <i>Duties Act 2001</i> (Tas);
Land Tax exemption	<ul style="list-style-type: none"> charitable institution <ul style="list-style-type: none"> ... and used for charitable purposes (s74 <i>Land Tax Act 2005</i> (Vic)); ... and used for education purposes (s47 <i>Land Tax Act 2010</i> (Qld)); schools <ul style="list-style-type: none"> school land not 'rateable' (s9 <i>Land Tax Act 2004</i> and s8 <i>Rates Act 2004</i> (ACT)); carried on solely for ... educational purposes and not for pecuniary profit (s10 <i>Land Tax Management Act 1956</i> (NSW)); bona fide educational institution not carried on for the purpose of private profit or gain (s33(4)(e) <i>Land Tax Assessment Act 2002</i> (WA); carrying on an educational institution otherwise than for pecuniary profit (s4(1)(h) <i>Land Tax Act 1936</i> (SA)); non-profit educational purposes and owned by a school (s18(f) <i>Land Tax Act 2000</i> (Tas));
Goods and Services Tax	<ul style="list-style-type: none"> schools <ul style="list-style-type: none"> Div 38: 'education courses' are GST-free (no requirement for 'charitable'). GST registration threshold is \$150,000 if charity (\$75,000 if not).

APPENDIX 2: SCHOOL FUNDING IN AUSTRALIA

All school students, whether they attend government, Catholic or independent schools, receive public support for their education from their state or territory government and the Commonwealth Government.

Students in government schools receive the most public funding, and the main source of this funding is the state or territory government that owns the school they attend. Students in non-government schools receive a lower level of public funding, and the main source of this support is the Commonwealth Government.

In 2008-09, total government operating recurrent expenditure on school education was \$38.9 billion. Total government recurrent expenditure on government schools was \$30.9 billion and \$8.1 billion on non-government schools. In 2008-09, the non-government sector received 21 per cent of government recurrent expenditure on schooling while the government sector received 79 per cent.¹⁵

Nationally in 2008-09, state and territory governments provided 88.8 per cent of total government recurrent expenditure on government schools and the Commonwealth Government provided 11.2 per cent. The Commonwealth Government provided 71.6 per cent of total government recurrent expenditure on non-government schools, with state and territory governments providing 28.4 per cent.¹⁶

In 2008-09, combining both state and Commonwealth Government funding, public support for a student in a government school was on average \$13,544. On average, total government funding for a non-government school student was \$6,850, while for an independent school student it was \$6,100 per year. However, for a student in a high SES school, public funding support could have been as low as \$1,750.¹⁷

The Commonwealth Government funding arrangements for non-government schools are in place until 2014. A Review of Funding for Schooling initiated by the Commonwealth Government is currently underway and it is anticipated that the Review will report to the Commonwealth Government by the end of 2012. Whilst the outcomes of the Review are yet to be made public, it is clear from the Commonwealth Government's public commitment that 'no non-government school will lose a dollar' that the Commonwealth Government will continue into the future to acknowledge the contribution of non-government schools to the public benefit in Australia through its ongoing funding.

¹⁵ Productivity Commission *Report on Government Services 2011*

¹⁶ Productivity Commission *Report on Government Services 2011*

¹⁷ Productivity Commission *Report on Government Services 2011* and independent sector estimates based on data derived from DEEWR Financial Questionnaire 2008 and 2009, SES funding tables and state funding data.

APPENDIX 3: RESEARCH

The benefits to the general community and the individual from education are well documented.

The OECD has found that employment rates are significantly affected by education levels, particularly for women. Employment prospects are significantly influenced by school retention rates. According to the OECD, for those with only lower secondary education, it is becoming more difficult to find employment, which suggests that in most OECD countries, this skill level is not sufficient to obtain a suitable job.

In Australia people with education attainment level below upper secondary education the employment rates were 75 per cent for men and 55 per cent for women. For people with education attainment levels at upper secondary and post-secondary non-tertiary education the employment rates were 87 per cent for men and 70 per cent for women and for people with tertiary education, employment rates were 90 per cent for men and 80 per cent for women.

The rewards to individuals with a tertiary education are, on average, twice as large as the rewards for those with an upper secondary education, reflecting the fact that an upper secondary education has become the norm in OECD countries. In some countries, individuals need to obtain tertiary education to reap the full financial rewards of education beyond compulsory schooling.¹⁸

OECD Average Employment rates for graduates of tertiary education are around 9 per cent higher, on average, than for graduates of upper secondary. The rewards for investing in tertiary education are typically higher for men, except in Australia, Spain and Turkey, where the returns are higher for women).

The OECD goes on to note that ‘The economic benefits of education flow not just to individuals but also to governments.’ Additional education beyond compulsory schooling produces large returns from both the individual’s and the public’s perspective. A man who invests in upper secondary education or post-secondary non-tertiary education can expect a net gain of more than USD 78 000 during his working life over a man who has not attained that level of education.¹⁹

As earnings generally increase with educational attainment, those individuals with higher levels of education consume more goods and services, and thus pay additional taxes on their consumption. Individuals with higher earnings typically also pay more into their pension schemes, and after leaving the labour force, will have a further income advantage.²⁰ The Australian Treasury highlights the public benefit of education to the individual and to the nation as a whole stating: ‘The more we develop the skill level of each worker, the higher the potential productivity of the labour force. A highly educated and skilled workforce supports innovation, the implementation of technological advances and the accumulation of physical capital ... The level of educational and skills attainment also significantly influences an individual’s future labour force participation and earnings potential. Australia must continue to build on our skills base to maintain a higher standard of living as the population ages.’²¹

¹⁸ OECD Highlights from Education at a Glance 2008 and 2011

¹⁹ OECD Education at a Glance 2011

²⁰ OECD Education at a Glance 2008

²¹ Treasury, 2010, The 2010 Intergenerational Report Overview, Canberra: Australian Government

In Australia, the Grattan Institute notes that ‘For each extra year of education, the average Australian can expect to earn 5 to 12 per cent more a year. These figures are in line with international evidence that estimates returns of about 10 per cent. Years of schooling, along with initial income, explain roughly one-quarter of variation in countries’ GDP’.²²

Adults with higher levels of educational attainment are generally more likely than those with lower levels of attainment to exhibit greater satisfaction with life, stronger civic engagement (i.e. vote, volunteer, express political interest and show interpersonal trust) and better perceived health. An individual’s engagement in society and perceived health conditions appear to vary across different levels of educational attainment, even after accounting for age, gender and income differences. This suggests that education may have an impact on these outcomes by raising skills and abilities, although other factors related to the choice of education may also be at play. The differences in life satisfaction between below upper secondary and upper secondary attainment is partly driven by individual differences in income, suggesting that there may be income effects of education on life satisfaction for these individuals.²³

Data published by the Australian Bureau of Statistics (ABS) supports the OECD data and highlights the benefits to society by the non-government schools sector in Australia, particularly in light of the OECD findings in respect of the further benefits of each additional year of education.²⁴

Noting the overall benefits to society for each year of education, the contribution of non-government schools is clear from ABS data. ‘Research has shown that those who have completed Year 12 are more likely to continue on to further education as well as enter into the workforce. Looking at young adults not currently studying at school in 2010, those who had last attended a non-government school were more likely to have completed Year 12 than those who had last attended a government school (86% compared with 68%). There was little difference between those who last attended Independent schools (88%) and Catholic schools (84%).’

Young men were less likely than young women to have attained Year 12, irrespective of the type of school they last attended. Amongst young adults who last attended a government school, 63% of men had attained Year 12, compared with 73% of women. Amongst young adults who last attended a non-government school, 81% of men and 91% of women had attained Year 12.’

The contribution of non-government schools continues post school. ‘In 2010, young adults (15-24 years), who were not currently studying at school and who had last attended non-government schools were more likely to be currently studying for, or have already attained, a non-school qualification than those who last attended government schools.’

Over half (54%) of young adults, who last attended non-government schools, were enrolled in study for a non-school qualification at the time of the ABS survey. In comparison, 39 per cent of young adults who last attended government schools were enrolled in study for a non-school qualification.

A non-government school education is more likely to get students into university or post-school training than education at a government school, according to data comparing school outcomes.²⁵

²² Grattan Institute “Strategy that gets top marks” Published in the Australian Financial Review Tuesday 17 August 2010

²³ OECD Education at a Glance 2011 What are the Social Outcomes of Education

²⁴ Australian Bureau of Statistics, Australian Social Trends, September 2011

²⁵ Australian Bureau of Statistics, Australian Social Trends, September 2011

Last year, more than 54 per cent of young adults who had attended a non-government school were enrolled to study for a post-school qualification compared with 39 per cent of former government school students and 39 per cent of non-government school students go on to attain a bachelor degree or above, compared with 25 per cent of government school students.

This public benefit from non-government schools is summed up as follows: “There is considerable evidence that private schools make a significant contribution to national productivity, directly, by raising the academic achievement of their own students, and instrumentally, through the competitive effect on public schools which respond to competition by raising quality. The benefits of higher education achievement are not only private, accruing to the students themselves, but are also public, enjoyed by society as a whole through positive externalities, affecting national economic growth and social well-being. Higher education achievement has positive effects on the whole population.”²⁶

²⁶ OECD 2006; Hoxby 2003; Robson and Hepburn 2002 quoted in Public Policy Institute, Australian Catholic University, November 2011 Issues Paper Parental Contributions to Education

SNAPSHOT 2011

THE INDEPENDENT SCHOOL SECTOR

INDEPENDENT SCHOOLS IN AUSTRALIA

Characteristics of the sector include:

- a significant and growing share of the number of Australian students
- schools that have strong community links
- a diversity of schools in terms of type, size and focus, educating boys and girls, students with special needs, and overseas students
- sound autonomous governance arrangements
- a comprehensive range of accountabilities of schools to parents and other stakeholders
- giving parents choice by providing a wide range of educational programmes, and settings
- independent schools are not for profit organisations.

Size of independent sector

NUMBER OF INDEPENDENT SCHOOLS		SCHOOL TYPE	
Primary	248 24%	Boys schools	6%
Secondary	72 7%	Girls schools	8%
Combined	640 63%	Coeducational schools	87%
Special schools	57 5%		
Total	1,017 100%	Boarding schools	152

Australian Bureau of Statistics (ABS) data does not categorise independent Catholic schools as independent. These schools are a significant part of the independent sector and when included there were a total of 1,087 schools and 546,300 full-time equivalent students in 2010.

Make up of independent schools

Unlike other sectors, the majority of independent schools operate autonomously. These schools do not rely on central bureaucracies or bodies, and are separately accountable to their parent and school communities. Some independent schools with common philosophies operate within approved systems. These include Anglican, Lutheran and Seventh Day Adventists Systems. There are also some other groupings of independent schools. All independent schools comply with state and federal education regulations and standards.

School Size

- 13% of schools have less than 50 students
- 39% of schools have less than 200 students
- 44% of schools have 200 – 999 students
- 16% of schools have 1,000 – 1,999 students
- 1%, or 13 schools, have more than 2,000 students
- the average size of independent schools is about 483 students
- the average size of a government school is about 338 students

Location of independent schools

Metropolitan 70%	Provincial 27%	Remote 3%
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Affiliations of independent schools

85% of all independent schools have a religious affiliation.

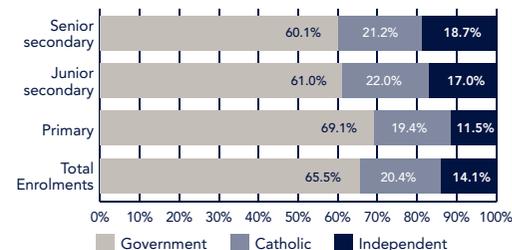
AFFILIATION	SCHOOLS	STUDENT FTE	%
Anglican	156	137,812	25.2%
Non-Denominational	188	72,100	13.2%
Christian Schools	136	53,757	9.8%
Catholic	64	50,702	9.3%
Uniting Church in Australia	43	49,289	9.0%
Lutheran	85	36,549	6.7%
Inter-Denominational	29	20,725	3.8%
Islamic	32	20,198	3.7%
Baptist	42	17,803	3.3%
Seventh Day Adventist	47	11,043	2.0%
Presbyterian	14	9,844	1.8%
Jewish	20	9,004	1.6%
Steiner School	42	7,515	1.4%
Pentecostal	16	6,838	1.3%
Assemblies of God	10	5,596	1.0%
Greek Orthodox	8	3,894	0.7%
Montessori School	39	3,955	0.7%
Brethren	8	4,025	0.7%
Other Catholic	8	3,469	0.6%
Other Orthodox	6	2,129	0.4%
Other Religious Affiliation*	11	5,033	0.9%
Other**	83	14,607	2.7%

*Other Religious includes Churches of Christ, Ananda Marga, Hare Krishna and Society of Friends

**Other includes special schools, international schools, indigenous schools, and community schools.

STUDENT ENROLMENTS

School enrolments by sector and level 2010

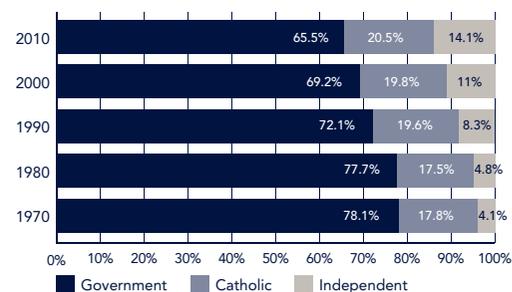


Enrolments in independent schools, 2010

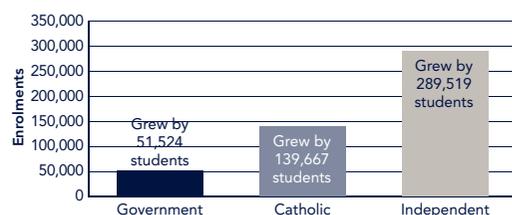
	MALE	FEMALE	TOTAL
Primary	115,868	114,664	230,532
Secondary	129,544	131,157	260,701
Total	245,412	245,821	491,233

Indigenous students in independent schools	9,315
Students with disabilities in independent schools	12,172
Overseas students in independent schools	8,378
Boarding students in independent schools	16,829

Enrolment change by sector, 1970 to 2010



Growth in enrolment share, 1985–2010



INDEPENDENT SCHOOL TEACHERS

Independent schools employ 16% of all teachers in Australian schools.

Total number (full-time and part-time)	46,999
FTE (full-time equivalent)	40,333

Teachers in the independent sector by gender and level (FTE) 2010

	PRIMARY	%	SECONDARY	%
Male	3,568	23%	11,115	45%
Female	11,956	77%	13,695	55%
Total	15,523	100%	24,810	100%

Student teacher ratios 1973 – 2010

YEAR	GOVERNMENT		NON-GOVERNMENT			
			CATHOLIC		INDEPENDENT	
	Primary	Secondary	Primary	Secondary	Primary	Secondary
1973	25.1	16.2	29.6	22.2	17.1	14.2
1980	20.2	12.2	23.9	16.6	17.3	13.3
1990	17.9	12.0	21.1	14.0	16.9	12.2
2000	17.1	12.6	19.1	13.4	15.7	11.4
2010	15.4	12.3	17.6	12.8	14.9	10.5

Sources: Figures in Snapshot are derived from data provided by the ABS, the Department of Education, Employment and Workplace Relations (DEEWR) and the Ministerial Council for Education, Early Childhood Development and Youth Affairs (MCEECDYA). Depending on the availability of data, enrolment figures are either full time or full-time equivalent (FTE). Some figures include independent Catholic schools and enrolments. Some figures may not add due to rounding.

SNAPSHOT 2011

HOW GOVERNMENTS FUND INDEPENDENT SCHOOLS

SOURCES OF INCOME FOR INDEPENDENT SCHOOLS

Private sources of funding (mainly parents)	57%
All government sources	43%

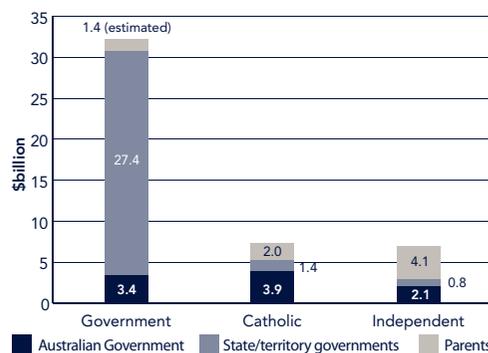
The proportions of private/government funding vary greatly from school to school.

Estimated savings to governments from the independent schools sector	\$3.6 billion p.a.
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Public funding of independent schools

All state and territory governments and the Australian Government share responsibility for the public funding of schools in Australia. State and territory governments are the principal public funding sources for government schools, while the Australian Government is the main public funding source for non-government schools.

Recurrent funding for school education, 2008-09



Average government recurrent funding per student 2008-09

Government school	\$13,544
Non-government school	\$6,850
Independent school	\$6,100

State and territory government funding

Overall, state and territory governments provide 27% of total government recurrent funding for independent schools. However the levels of funding for schools and methods used to assess them varies among the states and territory.

Australian Government recurrent funding 2009-13

Legislation authorising the Australian Government to maintain the SES funding model for non-government schools over the 2009-12 quadrennium passed federal parliament in 2008 and in 2011 an amendment was passed adding an additional year. Most of the funding is in the form of general recurrent grants.

It also includes funding for capital grants and existing targeted programs, including literacy, numeracy and special learning needs, languages education, ESL new arrivals, country areas and short term emergency assistance.

Australian Government general recurrent grants

The Average Government School Recurrent Costs (AGSRC) index is used to determine the level of Australian Government recurrent grants for non-government schools. The changes in the recurrent costs of educating a student in a government school, as measured by the AGSRC, are the basis for annual increases in Australian Government funding for both government and non-government schools.

AGSRC amounts for 2010

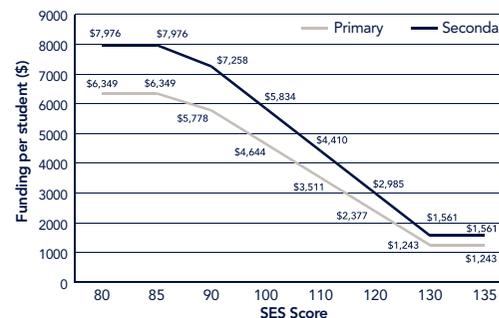
Primary	\$9,070 (8.2% increase from 2009)
Secondary	\$11,393 (7.0% increase from 2009)

Needs-based funding

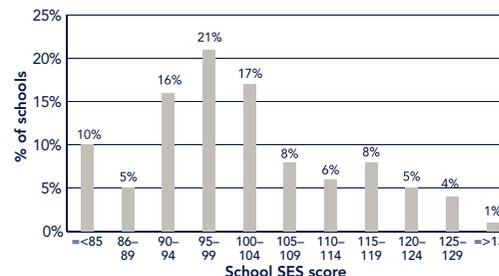
The Socio-Economic Status (SES) funding scheme for Australian Government funding measures the relative socio-economic status of independent school communities. A score is derived for each school which places it on a sliding scale of funding entitlement. SES scores range from 63 to over 130.

- schools with SES scores of 85 and below receive 70% of the AGSRC amount
- schools with SES scores of 130 and above receive 13.7% of the AGSRC amount.

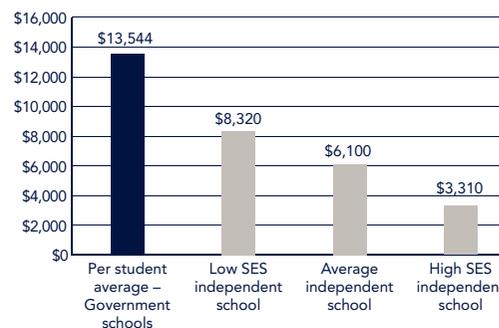
Sliding scale of funding entitlement according to SES status



Distribution of schools by SES score range 2010



Total government recurrent funding per student 2008-09 (all government sources)



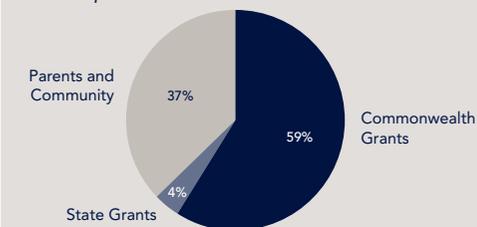
The amount of funding received from all government sources varies significantly depending on the circumstances of the school.

CAPITAL FUNDING

Parents and Donors

Normally, parents and donors in independent school communities contribute approximately 80% of funds for capital developments, such as school buildings, grounds and equipment. However, all schools in Australia are currently experiencing the one-off effect of the Building the Education Revolution (BER) which will provide \$14.7 billion over three years for school capital funding projects.

Sources of funding for capital development 2009



Capital Grants Program

Independent committees called Block Grant Authorities in each state and territory administer capital grants for non-government schools on behalf of the Australian Government. In 2010 it is estimated that grants for the independent sector will total approximately \$49 million.

In the independent sector Australian Government capital grants are distributed on a needs basis, with priority given to disadvantaged school communities with the least capacity to raise funds. In 2009, 64 per cent of total capital funding available to independent schools went to schools with an SES score less than 100, and 92 per cent of grants went to schools with an SES score of less than 110.

State and Territory government assistance

In Queensland some capital grants for independent schools are provided by the state government. Several state and territory governments also provide interest subsidy arrangements.

Note: Funding figures in *Snapshot* use the latest available data which is for the financial year 2008-09, or for the calendar year 2009.

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