



Consolidation of Commonwealth Anti-Discrimination Laws Submission by The Independent Schools Council of Australia (ISCA)

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 nearly 16 per cent of Australian school enrolments.

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.



Independent schools are not-for-profit institutions founded by religious or other groups in the community and are registered with the relevant state or territory education authority. Most independent schools are set up and governed independently on an individual school basis.

However, some independent schools with common aims and educational philosophies are governed and administered as systems, for example the Lutheran system. Systemic schools account for 17 per cent of schools in the independent sector.

Independent Catholic schools are a significant part of the sector, accounting for 10 per cent of the independent sector's enrolments. These schools have been included in the figures above.

KEY POINTS

- The independent schooling sector represents 1,090 schools with diverse range of religious affiliations and educational philosophies.
- Eighty five percent of all independent schools have a religious philosophy.
- The right of parents to take an active role in the education of their children and their right to choose the educational environment that best suits the needs of their children are important freedoms that Australians value highly.
- Current arrangements for student and enrolments and employment practices are a key element of the autonomy of independent schools.
- ISCA believes the current exemptions for religious schools with respect to both student enrolment and employment conditions represent an appropriate legislative balance between accommodating religious freedom and recognition of human rights.
- It is of primary importance to provide independent schools continuity and certainty in regards to maintaining their school ethos. Therefore the current exemptions and inherent requirements should be preserved in the consolidation of the Commonwealth Anti-discrimination Laws.

About the independent school sector

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. Boards of governors or committees of management are the key decision-making bodies for most independent schools and are responsible for issues such as a school's educational provision, current and future development and staffing. 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 schools with common aims, religious affiliations and/or educational philosophies also belong to systems within the sector. This means that some operational functions are carried out by the system on behalf of all schools within the system. Systemic schools account for 17 per cent of schools in the independent sector.

Many independent schools have been established by community groups seeking to meet particular needs. Examples include the independent community schools for indigenous students in remote areas, special schools for students with disabilities and boarding schools to educate children from rural and remote areas. There are also schools that seek to reflect the religious values of a particular community or that seek to practice an internationally recognised educational philosophy such as Rudolf Steiner or Montessori schools.

The independent sector is characterised by the individual ethos of each school and by its overall diversity. The 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 a greater 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 independent sector as a provider of education to the community as a whole.

Independent schools increasingly serve communities of parents from a wide range of socio-economic backgrounds, and the majority of schools have SES scores in the middle to low range.

School enrolments and trends

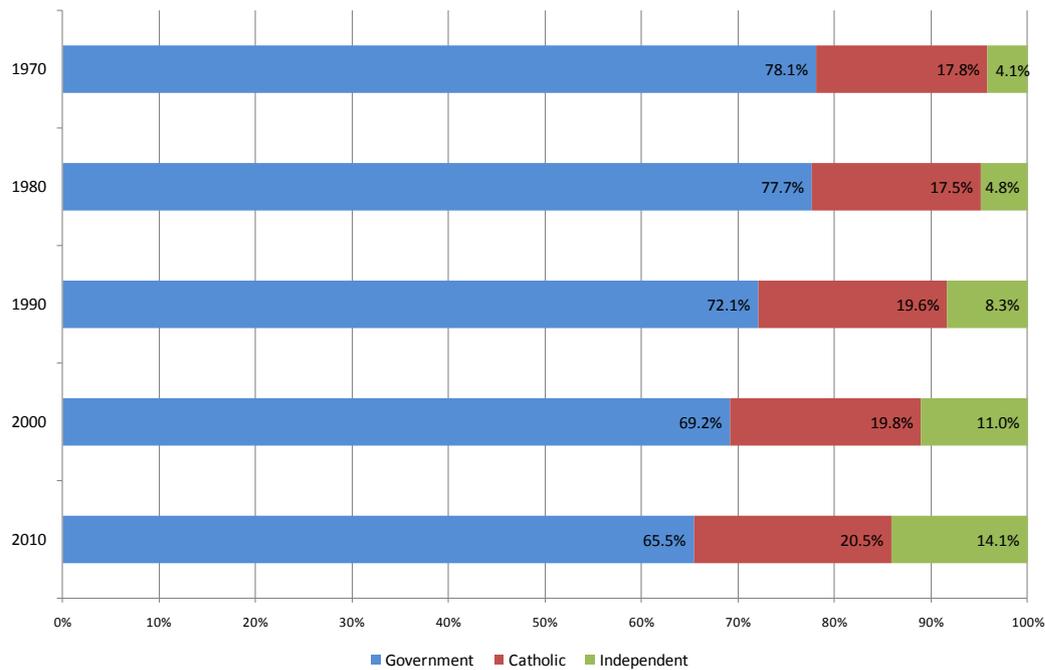
The independent school sector is the fourth largest school education provider in Australia and at secondary level is the second largest provider of schooling services.¹

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 1970². Full time enrolments have increased from around 114,000 in 1970 to over 491,000 in 2010.

¹ ABS *Schools, Australia* 2010 and Non-Government School Census 2010 – independent sector figures include independent Catholic enrolments

² ABS data excludes independent Catholic enrolments

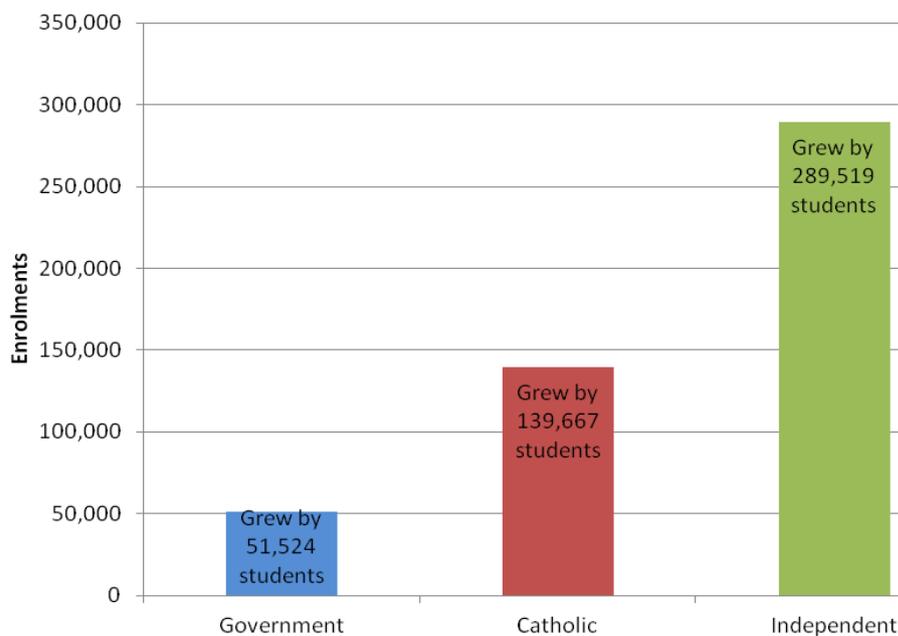
Chart 1: Enrolment change by sector, 1970 – 2010



Source: DEEWR and ABS *Schools, Australia*

The steady growth in enrolments in independent schools has continued irrespective of the political persuasions of governments, funding arrangements or economic conditions over the period, and confirms that a large and growing number of Australian families want increased choice in schooling options.

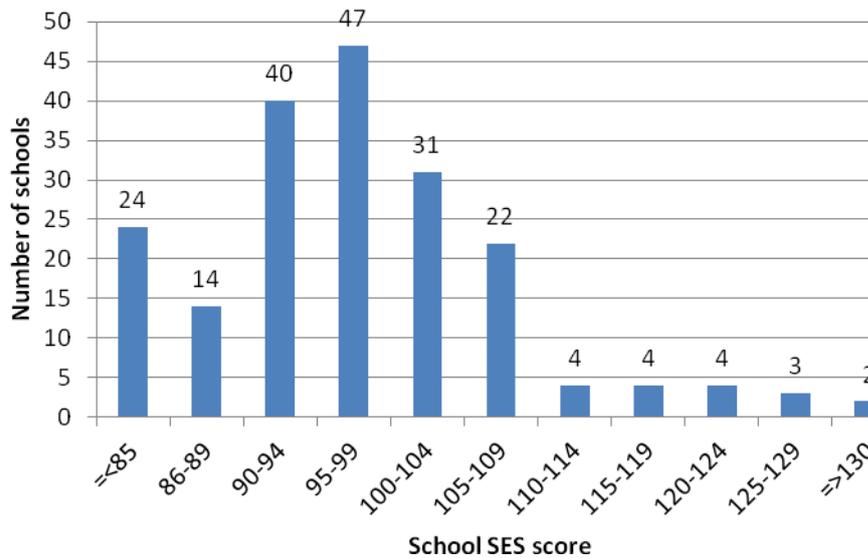
Chart 2: Growth in Enrolment Share, 1985 – 2010



Source: ABS *Schools, Australia*

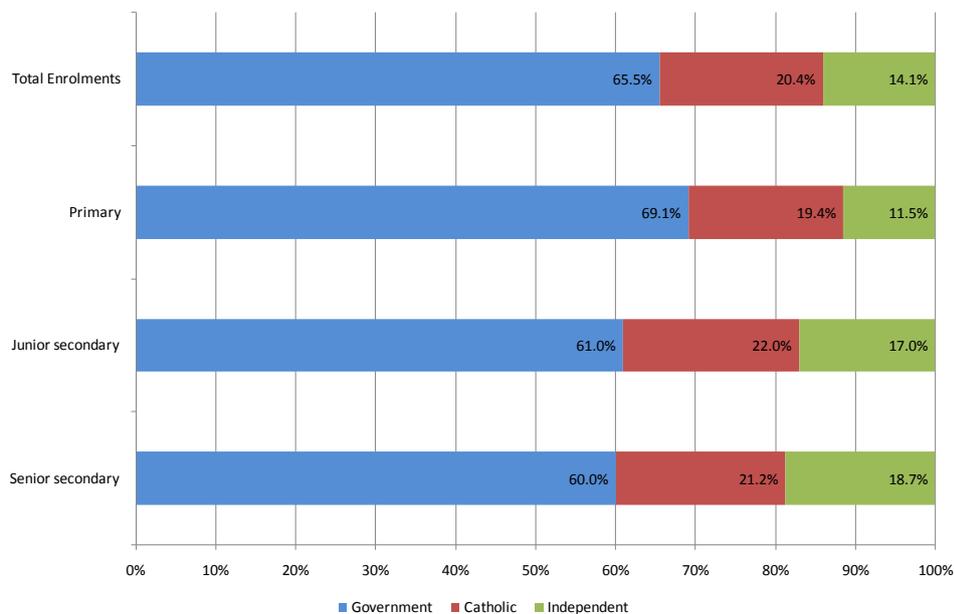
Analysis of enrolment growth patterns in the independent sector shows that enrolment growth has occurred predominantly in schools drawing students from a lower socio-economic profile. Analysis of the SES scores of the 195 new schools³ which opened during the eleven year period 2000 to 2010 shows that 70 per cent have an SES score of 100 or less. Most of these new schools aim to operate with low fees, and their establishment has contributed to the increasing diversity of the sector.

Chart 3: New schools in the independent sector by SES, 2000 – 2010



Source: DEEWR

Chart 4: Australian school enrolments by sector and level, 2010



Source: ABS *Schools, Australia 2010*

³ This figure does not include schools for which an SES score was not available.

As noted, the chart above does not include independent Catholic school enrolments. When these enrolments are included the number of enrolments in independent secondary schools rises to 305,753 making independent schools the second largest provider of secondary education in Australia.

While the independent sector accounts for 14 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.⁴ 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.⁵

Independent schools reflect the diversity of Australian society

Independent schools enrol students from a diverse range of regions, religions and social backgrounds.

Independent schools are located in all areas of Australia including the remotest locations, enrolling students from all backgrounds and catering for the range of special educational needs students may require to achieve their education goals.

Independent schools are usually established and developed through community groups to meet particular local schooling needs.

Many independent schools are faith-based schools with the sector 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. Eighty five per cent of all independent schools have a religious affiliation.

Table 1 below provides a breakdown of the affiliations of independent schools.

⁴ *ABS Schools, Australia 2010* – does not include independent Catholic school enrolments

⁵ DEEWR Non-Government School Census 2010 - includes independent Catholic schools

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.

Independent sector diversity and social inclusion

The *Melbourne Declaration on Educational Goals for Young Australians*⁶ provides an overarching framework for schooling to ensure the education of young Australians is in the national interest. It is a framework that allows individual needs and aspirations to be recognised and accommodated within wider societal purposes.

Independent schools reflect the diversity of the wider Australian community, covering a range of religious affiliations and educational philosophies and serving the needs of individuals or groups such as students with disabilities and indigenous students.

Co-educational schooling is most common in the sector, with 76 per cent of students in the sector attending co-educational schools in 2010. Single-gender schools, however, remain a feature of the sector with 6 per cent of schools being boys-only schools and 8 per cent of schools being girls-only schools.

A criticism sometimes directed at religious schools in the independent sector is that because they allow students to segregate into more homogenous groups, and because religious instruction may have strict stances on morality and behaviour, they create intolerance and undermine social harmony. In her paper 'The Rise of Religious Schools', Jennifer Buckingham states that "Although testing on this assumption is scarce, existing evidence suggests that this is not the case. People who have attended non-government schools (which are usually religious schools) do not express opinions that are less socially liberal or less tolerant of difference than students who have attended government schools. On some issues, the opposite is the case. People who attended non-government schools actually have higher rates of civic participation than people who attended government schools."⁷

Independent Schools and Student Wellbeing

Independent schools are usually established and developed through community groups in order to meet particular local schooling needs. Most often these communities have their basis in a particular religious or faith tradition. Other school communities are formed around a common education philosophy or to meet the social or learning needs of students. Examples include independent community schools for Indigenous students in remotes areas, special schools for students with disabilities, schools providing boarding facilities to rural and remote students and schools committed to alternative learning environments.

Independent schools are not-for-profit institutions that have been set up and are governed independently on an individual school basis. Many independent schools have governance and management arrangements which delegate the day to day responsibilities of the school's education program and staffing to the school's management team, and longer term planning and

⁶http://www.mceecdya.edu.au/verve/_resources/National_Declaration_on_the_Educational_Goals_for_Young_Australians.pdf

⁷ Australian Survey of Social Attitudes (2005) Australian Social Science Data Archive – quoted in The Rise of Religious Schools, Jennifer Buckingham, The Centre for Independent Studies

supervision to Boards of governance. These arrangements mean that school governors and educational management teams are accountable directly to their parent and school communities.

Given that independent schools report to and are responsible to their community, an emphasis on fostering a sense of belonging, and listening and responding to the community in order to meet the needs of the community is at the very core of independent schools. Independent schools build this social capital within their own communities through the development of networks among families and organizations within the local and international communities, and through the values that underpin the formal curriculum.

Independent school communities also contribute to the growth of social capital in the wider community. Schools encourage engagement of students in the local community. On a larger scale students are involved in community services at a local, state and international level. It is the experience of schools in the sector that families are seeking out independent schools because of their focus on building community, creating a sense of belonging and engaging with the wider community, locally, nationally and internationally.

Research has indicated that student wellbeing is strongly linked to student learning outcomes and that student engagement, motivation and achievement can be enhanced through school communities adopting practices that directly focus on developing and nurturing positive student wellbeing.⁸

Understanding the importance of student wellbeing to individuals, school communities and the broader community, the independent sector strongly supports the objectives of the *Melbourne Declaration on Educational Goals for Young Australians*. The *Melbourne Declaration* which was developed by Education Ministers in collaboration with the government, independent and Catholic school sectors recognises the important and vital role that schools play in the emotional, mental, social, moral and spiritual development of students.

ISCA research has shown that one of the most significant factors in influencing parental choice of school for their children is that the school community provide a supportive, caring and safe environment⁹. One important characteristic of school communities that nurture this form of environment is that they are deliberate and intentional in supporting students to develop resilience and positive mental wellbeing, and in providing help and care to students and families in need.

Regulatory environment for schools

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.

⁸ Noble, T., H. McGrath, T. Wyatt, R. Carbines, L. Robb. *Scoping study in approaches to student wellbeing – Final Report*. Department of Education, Employment and Workplace Relations: Canberra, 2008

⁹ Independent Schools Council of Australia. *Factors Affecting School Choice*. Independent Schools Council of Australia: Canberra, 2008

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.

State and territory governments provide some funding support for independent schools, and schools must comply with any related conditions of funding as well as reporting and accountability requirements.

The Australian Government is the source of most of the public funding for independent schools. Comprehensive conditions and accountability requirements apply to this funding which are specified in the *Schools Assistance Act 2008*, Schools Assistance Regulations, Administrative Guidelines: Australian Programs for Non-government Schools 2009 to 2013 and the Funding Agreement between the Australian Government and the approved school authority.

Schools are obliged to work co-operatively with their state or territory government to support that government in fulfilling its obligations under the National Education Agreement. Independent schools must also agree to support the achievement of the Melbourne Declaration on Educational Goals for Young Australians and the Council of Australian Governments (COAG) outcomes for schooling. Governments have acknowledged through the Melbourne Declaration on Educational Goals for Young Australians that "Together, all Australian governments commit to working with all school sectors and the broader community to achieve the educational goals for young Australians." One of the action areas for achieving this end articulated in the Declaration is developing stronger partnerships.

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

Independent schools are bound by a number of other legal requirements associated with their operations. For example, as companies limited by guarantee or as incorporated associations, independent schools 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.

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

For most independent schools (unless they are part of a school system), decision-making takes place at school level through the school board or council and the role of the principal. This imposes far greater accountability to stakeholders at the school level than is the practice in systemic schools. The school board plays a key role in all forms of accountability. The board requires accountability for all the activities of the school, and is itself accountable to the school's immediate stakeholders, to the community at large, and to governments aiding or regulating the operation of the school.

The autonomy of independent schools enables them to respond flexibly to the needs of their local communities and individual students. Individual schools operate in an environment of choice and diversity. The forces that operate in this environment impose an imperative for schools to be aware, innovative and responsive to change in order to ensure schools continue to meet the needs of students and expectations of parents.

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.

School Ethos

A school's culture or ethos is made up of the unique characteristics of spirit and beliefs of a school community and is demonstrated through academic and educational aspirations, the nature of personal relationships fostered, and the societal attitudes and responsibilities modelled and taught at the school.¹⁰

A school's ethos is determined by the nature of the school's community, its leaders, educators, learners, parents and supporters. The school ethos influences the policies and programs of the school which ultimately affect the vision of what the school community aims to achieve.¹¹

Independent schools provide an opportunity for parents to choose the values and religious understandings to which their children will be exposed. It is important that the unique qualities of these schools and their appeal to parents, whose religious beliefs or values may not sit comfortably in secular schools, not be lost. Religious schools can allow for a more complete immersion in the traditions and practices of a particular religion.

It is important that Australian parents continue to enjoy the freedom to choose an education for their children that they believe best suits their individual needs and supports the values taught at home.¹²

In independent schools, values education is an important part of school life and culture, and most often is linked to the religious affiliation of the school. Research on school choice shows that values are important factors in the continued growth of the independent schools sector in

¹⁰ <http://www.bullyingnoway.com.au/ideasbox/things-work/info-build-3-2.shtml>

¹¹ <http://www.friendlyschools.com.au/materials/whole-school/ethos.php>

¹² P18 Independent Schooling in Australia 2006-08

Australia. Families are attracted to the strong communities and supportive environments they find in independent schools.¹³

In conclusion

The right of parents to take an active role in the education of their children and their right to choose the educational environment that best suits the needs of their children are important freedoms that Australians value highly. They are freedoms that underpin the development and growth of the independent schools sector and explain its diversity. School autonomy is vital to sustain this diversity and offer meaningful choice to parents.¹⁴

There is a wide range of independent schools with religious affiliations and within each affiliation there exists a great diversity between schools and their approaches and practices. The diversity within the sector makes the role and use of aspects of the anti-discrimination law such as religious exemptions, extremely complex. Any changes to these exemptions would have greater impact on some schools than others. These affected schools in turn, would face significant challenges and would perceive the changing of the law as limiting their capacity to make choices, undermining the school's ability to create a community of religious belief.

While supporting the Government's objectives in seeking to simplify and clarify organisations' obligations in relation to human rights, the independent sector is concerned to ensure that the proposed changes does not impact on the operation and autonomy of independent schools.

ISCA believes the current exemptions for religious schools with respect to both student enrolment and employment conditions represent an appropriate legislative balance between accommodating religious freedom and recognition of human rights.

It is of primary importance to provide independent schools continuity and certainty in regards to maintaining their school ethos. Therefore the current exemptions and inherent requirements should be preserved in the consolidation of the Commonwealth Anti-discrimination Laws.

The independent sector notes that there will be further opportunities for consultation with the release of an exposure draft of the legislation and looks forward to participating during this process.

Bill Daniels
Executive Director
1 February 2012

¹³ P18 Independent Schooling in Australia 2006-08

¹⁴ P8 Independent Schooling in Australia 2006-08