



INDEPENDENT SCHOOLS
COUNCIL OF AUSTRALIA

Review of the *Australian Charities and Not-for-profits Commission Act 2012* and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012*

**Submission by
The Independent Schools Council of Australia**

28 February 2018

Introduction: About ISCA

The Independent Schools Council of Australia (ISCA) is the national peak body representing the Independent school sector. It comprises the eight state and territory Associations of Independent Schools (AISs). Through these Associations, ISCA represents a sector with 1,123 schools and 604,436 students, accounting for approximately 16 per cent of Australian school enrolments. ISCA's major role is to bring the unique needs of Independent schools to the attention of the Australian Government and to represent the sector on national issues.

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

- Schools affiliated with 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.

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 practise an internationally recognised educational philosophy such as Rudolf Steiner or Montessori schools. Independent Catholic schools are a significant part of the sector, accounting for eight per cent of the Independent sector's enrolments.

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 Lutheran or Anglican systems. Systemic schools account for 18 per cent of schools in the Independent sector. Four out of five schools in the sector are autonomous, non-systemic schools.

School Regulatory Environment

In addition to their NFP status, all Independent schools in receipt of Australian Government funding are also registered charities with the Australian Charities and Not-for-profits Commission (ACNC) and are required to be separately registered as a school with the relevant state or territory education authority. Additionally, all schools seeking Government funding also have extensive and separate reporting responsibilities to both the Commonwealth and state/territory governments on a range of education and child welfare issues.

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

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

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

Body corporate or body politic

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

Not-for-profit

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

Financial viability

(4) The person is financially viable.

Fit and proper person

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

ComLaw Authoritative Act C2013A00067
*Approving authorities and bodies **Part 6***
*Approving approved authorities **Division 2***

Further, Section 75 of the Act states:

Matters to have regard to

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

- (a) for the purposes of subsection (3)—whether the State or Territory Minister for a school in relation to which the person is applying considers that the person conducts the school for profit; and*
- (b) for the purposes of subsection (4)—the amount of financial assistance the person receives, or is likely to receive, from the Commonwealth, a State or a Territory; and*
- (c) for the purposes of subsection (5)—whether the person has complied, or is complying, with laws of the Commonwealth, a State or a Territory relating to the provision of school education; and*
- (d) any other matters the Minister considers relevant.*

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

Schools were obliged to work co-operatively with their state or territory government to support that government in fulfilling its obligations under the National Education Reform Agreement, up until the end of 2017. Commencing in 2018, schools will also be obliged to work co-operatively with their state or territory government to support that government in fulfilling its obligations under the Australian Government’s proposed new National Schooling Reform Agreement and associated bilateral implementation agreements.

Schools must participate in all specified National Student Assessments, 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 and Training (DET) and the Australian Curriculum, Assessment and Reporting Authority (ACARA). Schools must also 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 still have some reporting responsibilities to the Australian Securities and Investments Commission, or to their state or territory registrar of associations, unless these reporting requirements have already been transferred to the ACNC. They are also subject to regulation by the Australian Taxation Office.

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

The *My School* website (operated by ACARA) offers an additional and easily accessible level of transparency to the operations of schools in all sectors. ACARA collates and publishes a range of student outcomes and performance indicators of school services, including a comprehensive overview of the financial aspects of a school's operations. The financial aspects of the *My School* information have been taken directly from the information provided by schools in the DET's Financial Questionnaire (FQ).

It is interesting to note that the general growth in regulatory pressures facing Independent schools in recent years is reflected in non-teaching staff numbers that have increased by 46% in the last ten years to 2016, primarily due to the increasing compliance burden being placed on schools. This compares with an increase in student numbers of 19% and teachers of 22%.

School Reporting Environment

The ACNC was established to improve the regulatory environment for charities and had three key objectives. These were:

1. maintaining, protecting and enhancing public trust and confidence in the not-for-profit sector;
2. supporting and sustaining a robust, vibrant, independent and innovative not-for-profit sector; and
3. promoting the reduction of unnecessary regulatory obligations on the not-for-profit sector.

The ACNC has been largely successful in achieving the first two of the objectives, while the reduction of regulatory obligations remains a continuing challenge for schools. Independent

schools acknowledge the clarity and support to the charity sector that the ACNC has brought and believes that the continuation of the three key objectives are still contemporary and necessary in providing enhanced transparency and accountability.

The aim of significantly reducing red tape is not easily achieved for the non-government education sector. Schools continue to be under considerable reform pressure in relation to funding, curriculum and potential reporting requirements (DET and ACARA). As an already highly regulated charity, each Independent school must comply with the range of regulatory reforms administered by the ACNC without the benefits of the yet to materialise significant lessening of the complex regulatory environment for schools as outlined above. It is relevant to note that government schools are not required to comply with the ACNC regulatory structure, thus creating an imbalance of regulatory compliance requirements on non-government schools.

In setting up the ACNC, the Australian Government recognised that the Independent schooling sector was already highly regulated and that data about the sector that was relevant to the ACNC's reporting requirements was already collected by DET (yearly through DET's detailed FQ process) and reported and published through portals such as *My School*. In recognition of this, transitional reporting arrangements were provided for under the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012 s10(3A)*, where the ACNC was to treat the FQ financial information given to DET, as satisfying the requirements for ACNC financial reporting.

This transitional provision has continued to be applied annually, recognising that DET continues to be the primary government financial reporting authority for Independent schools. Independent schools have been required to annually submit the remaining aspects of the Annual Information Statement (AIS), minus the financial report, to the ACNC. Since the 2015 financial year, DET has shared the FQ's financial data on each Independent school with the ACNC, and this has been uploaded into the financial report section of the AIS, thus satisfying the obligations of Independent schools to report financial data to the ACNC.

ISCA notes, the recent announcement by the Hon Michael Sukkar MP, Assistant Minister to the Treasurer, that these transitional reporting arrangements for Independent schools would be extended to include the 2017-18 and 2018-19 financial years.

Regulatory Reform

In setting up the review, Minister Sukkar's terms of reference requested that the review panel should evaluate the suitability and effectiveness of the ACNC Acts. In particular, the review should:

1. Examine the extent to which the objects of the ACNC Acts continue to be relevant.

2. Assess the effectiveness of the provisions and the regulatory framework established by the ACNC Acts to achieve the objects.
3. Consider whether the powers and the functions of the ACNC Commissioner are sufficient to enable these objects to be met.
4. Consider whether any amendments to the ACNC Acts are required to enable the achievement of the objects and to equip the ACNC Commissioner to respond to both known and emerging issues.

ISCA notes that the focusing questions in response to issues raised in the Review's Terms of Reference include:

Question 5: Is there sufficient transparency to inform the ACNC and the public more broadly that funds are being used for the purpose they are being given?

In regards to terms of reference point 2 above and focusing question 5, ISCA supports the ACNC's object of improving transparency of the charities sector and supports the ACNC's action in the implementation of governance standards, to improve governance, accountability and transparency. However, it is noted once again that the governance of Independent schools is already heavily regulated under specific Commonwealth and state/territory education legislation.

ISCA also suggests that consideration be given to a review and clarification of the terminology contained within the governance standards, in particular a review and simplification of the definition of 'responsible persons' and 'responsible entity'. This terminology is not evidenced in any other governance arenas and has led to confusion in determining where governance responsibility and authority lies in some jurisdictions. In Queensland for example, the state schools regulatory body, the Non-State Schools Accreditation Board, has different governance requirements than the ACNC governance standards which complicates the demonstration of compliance which is required at regular intervals throughout their operation.

Question 7: Are the powers of the ACNC Commissioner the right powers to address the risk of misconduct by charities and not-for-profits, or those that work with them, so as to maintain the public's trust and confidence? Is greater transparency required and would additional powers be appropriate?

In regards to terms of reference point 3 above and focusing question 7, ISCA believes that the ACNC Commissioner has sufficient powers already to address any risk of misconduct in the charities sector, and this has been evidenced by action taken by the ACNC to investigate and if required, to deregister and prosecute where misconduct has been found. The ACNC Commissioner has sufficient powers and a further extension of powers is not required or recommended.

Question 8: Has the ACNC legislation been successful in reducing any duplicative reporting burden on charities? What opportunities exist to further reduce regulatory burden?

In the Guide to the ACNC Act, it states that “The Commissioner of the ACNC will cooperate with other government agencies to oversee a simplified and streamlined regulatory framework for not-for-profit entities.” A Non-government School Sector Reporting Duplication Working Party has been established by the ACNC with membership including DET and non-government school representatives. Considerable progress has been made through this working party on both modifying and mapping DET’s FQ data to meet the annual financial reporting requirements of the ACNC. This is consistent with the “report once, use often” philosophy of the ACNC.

In regards to terms of reference point 4 above and focusing question 8, ISCA has identified an area where there is an opportunity to further reduce the regulatory burden for Independent schools. Considering the progress already made for schools in these streamlined reporting arrangements, ISCA requests that as part of the Review, consideration be given to Independent schools for the inclusion of a permanent exemption in the ACNC Act covering financial reporting to the ACNC, with the ACNC recognising in perpetuity, the reports given to DET as fully satisfying the ACNC reporting for Independent schools. The reporting of same or similar information, as already reported under the requirements of other Australian Government authorities, is an unnecessary duplication.

Conclusion

ISCA acknowledges the achievements of the ACNC in managing the regulatory environment for charities since its establishment in 2012.

In addressing the terms of reference of this Review and associated focusing questions, ISCA has identified two areas where the ACNC could reduce the regulatory burden and provide clarity on governance standards for Independent schools.

1. Review and clarify the ‘responsible persons’ and ‘responsible entity’ terminology contained within the current governance standards to avoid inconsistencies with state/territory requirements.
2. In recognition of current detailed reporting arrangements, include a permanent exemption in the ACNC Act covering additional financial reporting direct to the ACNC by Independent schools.