



Independent Schools
Council of Australia

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ACNC Implementation Design Discussion Paper
Australian Charities and Not-for-profits Commission Implementation Taskforce
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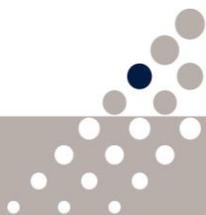
Submission on the ACNC: Implementation Design Discussion Paper

The Independent Schools Council of Australia (ISCA) welcomes the opportunity to respond to the Discussion Paper released in December by The Treasury on the proposed design and implementation of the new reporting framework for charities. ISCA is the peak national body covering the independent schools sector which also comprises the eight states 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 Australian 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.

All of these 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. As a school, they have current reporting responsibilities to both the Commonwealth and State/Territory Governments on a range of schooling issues. Their legal structures can be diverse with many falling into the following categories:

- 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 and assets can be owned by an underlying church property trust. In a number of cases the company owns the school outright;
- Public benevolent institutions (Yiparinya Indigenous School).

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

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.

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.

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; and*
- 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 small amounts of revenue such as uniform shops, canteens, consultancy services to other schools, or the utilisation of school facilities, but this revenue is incidental to the overall operations of the school and all revenue is reinvested in activities which promote the schools’ dominant purpose, to wit, the advancement of education. Except in relation to school building funds, very little revenue is raised by schools from accepting donations. 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.

ISCA, on behalf of the independent school sector, has the following comments to make regarding the questions raised in the discussion paper:

1. Do you think that the introduction of the Charity Passport would reduce reporting obligations to government? What are the obstacles to achieving one stop shop reporting on the basis of the data being collected by the ACNC?

In responding to the proposed framework for the ACNC and the associated reporting structures, ISCA expresses significant concern that the one stop shop concept as it applies to the independent schools sector is simply not achievable in the foreseeable future. The independent schooling sector will as a result, not only have yet another layer of reporting added to the already burdensome government reporting requirements, but that the ACNC is looking to prescribe measures (such as a common chart of accounts) which will impact significantly on the sector.

The sector has had measures such as these in place for many years in order to facilitate the extensive annual financial reporting requirements to DEEWR. As well, given that the data from each independent school is now publicly available on the government’s My School’s website, ISCA would be of the belief that the data of each independent school is already centrally held at a government one-stop-shop providing full transparency of this information through a government agency.

ISCA strongly recommends that the independent schooling sector be treated differently from other charities for reporting, with the government recognising and acknowledging that they already hold more than the required ACNC information on each independent school within their various existing departments. The role of the ACNC as the one-stop-shop would then be to gather the information from the various government departments, rather than placing a further compliance burden on each school.

2. Will the information collected by the annual information statement be adequate for the purpose of achieving transparency and accountability?

The typical independent school receives the vast majority of its income from a combination of government grants (Commonwealth and State) and from student fees. Income received from donations and charitable giving (fundraising) is very small (almost negligible) in comparison. Due to the nature of the income stream, the independent schooling sector has imposed on it highly rigorous and prescriptive reporting requirements to government (in particular DEEWR and State DET’s) and ISCA would foresee that this reporting requirement would not change even with the implementation of the ACNC.

Education has been defined in case law as one of the heads of charity and as independent schools are by their very nature a charitable institution, creating a separate category for reporting would support this status. Transparency is already achieved for the school sector through the My School website.

3. Is there any additional information that should be collected and provided to the public?

Schools already provide through My School website a greater range of information and transparency than proposed by ACNC and could not see any need for additional information.

4. Should the Annual Information Statement give charities the option of providing narrative descriptions of the outcomes achieved?

It is assumed that at the time of establishment, an organisation would be required to demonstrate its compliance with the statutory definition of a charity. ISCA would see no benefit gained by re-stating each year the objectives of an organisation in relation to its charitable purpose unless there are changes in its constitution of articles of association. Charity status is about the purpose of the organisation to provide it on a yearly basis will place an unnecessary burden on the organisation. A school for example, would not change its objectives from year to year and would not change its educational focus group from year to year. Meeting the expectations of the school community in relation to education would be a consistent outcome for the school.

5. Is the SBR taxonomy an appropriate basis for the reporting of financial items to the ACNC?

To change reporting structures for schools would be a costly and time consuming exercise. As mentioned above, schools are not relying on public donations for their existence and may currently have very sophisticated accounting structures in place. Great care would need to be taken in imposing any new reporting structures, especially given the propensity for government school non-government school sector comparisons on income per student and availability of school assets.

Independent schools in particular have a complex financial structure and individual schools themselves will face considerable public scrutiny in relation to proportions of government verses private funding contributions. The ACNC has advised that data for the My School web site will be extracted from the ACNC financial data. This could be problematic, as there are significant definitional differences in disclosed data. It is possible that DEEWR will be the body that continues to collect financial questionnaire and My School data, as a result there will be a duplication of published non-government school data. As a result, the following practical concerns will be present:

- Data disclosed for a school as income on the My Schools site will be different to data disclosed for the same school as income on the ACNC site (on ACNC, capital income is not quarantined and shown separately as it is on My School as one example only).
- Independent schools in many cases are a subsidiary of a larger organisation. The ACNC will publish data of the consolidated group and the My School site of the school only. This will again show discrepancies in data. (A simple example is the exclusion of year 1 minus 2 and below data from My School that will not be excluded on ACNC).
- Media in particular has extracted school information for publicity reasons and used the data to discuss Government funding entitlement as it applies to independent schools in a sensational and misleading manner.
- The ACNC site asks specifically for the value and proportion of income derived from Government funds to be identified as well as publishing full detailed balance sheets and specifying the value and proportion of community donations. This publication will remove

all safeguards that schools presently are being insulated against by the ACARA and the My School web site.

6. Is the proposal for information collected through the annual information statement and financial report appropriate for each tier?

Under the ACNC definition of “entity’s”, ISCA would conjecture that the majority of independent schools could be categorised into the “large registered entity” category (or Tier 3 companies). The information provided in the discussion paper indicates that there are 11% (*which equates to approximately 6,160 entities*) of the charity population in this category. The independent schooling sector in Australia has in excess of 1000 schools, a significant (*about 16%*) portion of this Tier 3 sector.

Given that the DEEWR (and State) reporting requirements are significantly greater in both depth and prescription than the proposed ACNC Tier 3 reporting, ISCA would strongly recommend that schools be deemed to have fulfilled the ACNC reporting requirement through meeting current reporting obligations to government. The responsibility to roll this information into a new not-for-profit one-stop-shop reporting regime rests with the ACNC and is achieved through the sharing of information between government agencies (joined up government) not through independent schools reporting yet again to another agency.

In general however, the reporting tier thresholds would appear overall to be too low for a large range of charities.

7. The ACNC Commissioner has the discretion to vary an accounting period. Under what circumstances should the Commissioner allow for an alternate accounting period?

Majority of schools have their accounting period on a calendar year and there would be considerable disruption to schooling if this had to change. Given that the school year does not in reality commence until February and the beginning of first term of a school year is hectic from a number of perspectives, it would not be feasible for schools to comply with a four month reporting window. It is ISCA’s belief that schools should be allowed a six month reporting time frame.

8. Do the ATO practice statements provide an appropriate guide?

Whilst providing a practical guide to ATO compliance for many sectors, it should not be necessary for the school sector to have need for a practice statement in relation to fulfilling their charitable obligations.

9. Are the transitional arrangements clear for new and existing charities?

Transition arrangements appear to be clear in general, however the time frames for the setting up of the ACNC and the commencement of its operational activities is too short for many

10. What assistance could the ACNC provide to support the sector’s use of online engagement?

There would need to be help desks available and the ACNC would need to provide fully funded education sector specific training for schools staff. Any ACNC support staff would need detailed knowledge of the school sector and be cognisant of the limited contractibility of some schools due to operating within school hours and yearly calendars.

11. Are there barriers to online reporting or registration? How can the ACNC ensure that it is effective?

Not all schools have adequate broadband facilities and not all schools are covered by standardised reporting formats. Smaller schools, whilst most likely passing the proposed Tier 3 category, in reality have limited administrative resources and expertise. There would appear from previous attempts at online reporting for the school sector that there still exists serious systems interoperability issues in some areas and this would need to be addressed.

12. Are there barriers to the AUSKey as the ACNC online authentication tool?

The AUSKey concept would appear to provide an opportunity to simplify the authentication issue across government agencies. It would need to be tested on the multi level reporting requirements in the school sector.

13. Are these proposed principles guiding the ACNC's role as an educator adequate and appropriate?

The ACNC's main principles underpinning its education role would appear to be appropriate for the school sector, provided it has a sufficient level of funding to achieve these objectives.

14. What should be the scope of the ACNC's education role?

The introduction of the ACNC into the NFP sector will be a major change for many smaller NFP sector entities. It is incumbent on the ACNC to ensure that the sector has sufficient knowledge to comply with the regulations and standards in any proposed implementation time frames. It is ISCA's recommendation that the proposed time frames and scope of the changes are of such proportion that these time frame may not be achievable and therefore the educational role of the ACNC would need to be extended.

15. Is it appropriate for the ACNC to endorse education and guidance material provided by other entities (e.g. peak bodies)?

Any material or training services provided by peak bodies and approved organisations that comply with or exceed the proposed regulatory structure should be endorsed by the ACNC as complying with the standards.

It is important to re-state that all organisations relying heavily on Government funding (such as non-government schools) already have in place extensive compliance and reporting requirements through their funding departments. It is not necessary in the foreseeable future to include these organisations in the reporting and governance structures proposed by the initial setting up of the ACNC.

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 Australian 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 and could affect educational outcomes.

ISCA looks forward to further consultation on these initiatives.

Yours faithfully

Bill Daniels
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