



Independent Schools
Council of Australia

**SENATE ECONOMICS COMMITTEE
INQUIRY INTO THE DISCLOSURE REGIMES FOR CHARITIES AND NOT-FOR-
PROFIT ORGANISATIONS**

**SUBMISSION BY
THE INDEPENDENT SCHOOLS COUNCIL OF AUSTRALIA**

ABOUT ISCA

The Independent Schools Council of Australia (ISCA) is the peak national body covering the independent school sector. It comprises the State and Territory Associations of Independent Schools. Through these Associations it represents a sector with 1,100 schools and around 510,000 students accounting for nearly 15 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, while 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.

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 nearly 18 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. Although the Australian Bureau of Statistics does not categorise them as independent, these schools have been included in ISCA's figures.



SUMMARY

1. The independent school sector is already subject to an extensive regime of financial and educational accountability for the funds it receives from government and private sources. Independent schools recognise the importance of high standards in governance and reporting and accountability to stakeholders.
2. The independent school sector acknowledges the complexity of the current regulatory arrangements of the not-for-profit sector and supports the Committee's terms of reference.
3. The recommendations at the conclusion of this Submission reflect the sector's priorities for consideration by the Committee and focus on the need to ensure that the outcomes of the Inquiry enhance the capacity of independent schools to continue to provide a high quality education to a growing and diverse segment of the Australian community.

INTRODUCTION

4. The Independent Schools Council of Australia (ISCA) is pleased to have this opportunity to provide a submission to the Senate Standing Committee on Economics Inquiry into the Disclosure regimes for charities and not-for-profit organisations and notes that the Inquiry will examine:

- a. the relevance and appropriateness of current disclosure regimes for charities and all other not-for-profit organisations;
- b. models of regulation and legal forms that would improve governance and management of charities and not-for-profit organisations and cater for emerging social enterprises; and
- c. other measures that can be taken by government and the not-for-profit sector to assist the sector to improve governance, standards, accountability and transparency in its use of public and government funds.

5. This submission by ISCA does not specifically address the Terms of Reference individually, but rather provides the Committee with contextual information regarding independent schools as not-for-profit entities and general information regarding current models of regulation for the sector. The submission also outlines priorities that the sector would like the Committee to consider when examining models to improve governance, accountability and transparency in the sector including in the use of public and government funds.

BACKGROUND

6. While there are many similarities within schools across the government, Catholic and independent sectors, there are significant differences in the way independent schools are managed. Catholic and government schools operate within a systemic environment where a central authority makes decisions on behalf of individual schools. Independent schools, however, are largely autonomous bodies that make their own decisions. Effective governance by a school's governing body is therefore essential for schools in the sector to develop and prosper.

7. The independent sector is the smallest of the three school education sectors, but it is the fastest growing and the most diverse. The sector provides for individual choice of schooling, offering educational opportunities to meet a wide range of needs for students and families. The key point of difference between independent schools and other schools in Australia is their independence and autonomy.

8. All independent schools which receive government funding are not-for-profit organisations and are governed by their own Boards. In most instances, the school, as an independent entity, owns the school. Some schools are owned by the church to which they are affiliated or a local community organisation. Any income they receive is directed to meeting the operating costs of the school or invested in providing resources or improving the school's facilities.

Legal Structure of Independent Schools

9. As outlined above, all 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. the Uniting Church Schools);
- Schools established by Acts of Parliament with the specific purpose of establishing the school as a charitable institution (eg 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 with all the assets owned by an underlying property trust. In a number of cases the company owns the school outright.

Purposes and Activities

10. Fundamentally the purpose of independent schools has changed little over the last century and remains the advancement of education. The provision of school education set within a particular religious and/or educational philosophy continues to be the primary purpose and focus of independent schools. What has changed over time is a widening community expectation as to what constitutes schooling, with this having far reaching implications for the breadth and depth of skills, knowledge and experiences that are seen as constituting a quality education. There has been increasing participation in education, especially in the pre-school and upper secondary areas, and a blurring of the boundaries of school education between schooling and pre-schooling and schooling and post-school training and education, reflected for example in developments in vocational education in schools. There has also been a widening community expectation as to the role of schools, with schools responsibilities extending into other areas of social concern such as drug education, values education, health promotion programs and pathways into work.

11. The activities of independent schools and their ancillary organisations are almost entirely directed to their dominant purpose of providing school education. Other activities involve providing related services to the school community such as education and care to children before compulsory school age and out of school hours care and

raising additional income to improve the quality of education provided by the school or to reduce its reliance on fees for service.

Funding

12. The proportion of private and government funding for independent schools varies greatly from school to school. 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.

13. Independent schools are funded from a combination of fees for service, government subsidies and donations/fund raising. The significance of these three sources varies considerably between schools, especially the balance between fees for service and government subsidies, with the level of government funding based on an indicator of need. The independent sector as a whole sources 59 per cent of income from private sources of funding (mainly parents) and 41 per cent of income from government sources. Of the 41 per cent of income from government sources, state and territory governments provide 27 per cent of total government recurrent funding for independent schools with the balance being provided by the Australian Government.

14. As a general rule, donations/fundraising account for a relatively small share of independent schools' income, with this partly a consequence of current tax arrangements which limit deductibility to private donations to specifically established school building funds and library funds. Nonetheless donations and fund raising are critical to the quality of education services provided by an individual school.

Accountability

15. Independent schools must account to governments for their government funding. Non-government schools have contractual obligations to report to the Commonwealth and their State or Territory governments for the use of public funds. The accountabilities of independent schools do not begin and end with national and state educational authorities, but also include high levels of accountability to fee-paying parents and students, and affiliated organisations and founders.

16. The Australian Government has legislated for an extensive educational and financial accountability framework in respect of the funding it provides to independent schools. Government and Catholic schools are structured as systems and as such have one agreement with the Australian Government per state and territory. Each independent school is required to sign an individual funding agreement with the Australian Government which sets out the conditions on which financial assistance is provided. The agreement states that the Australian Government is required by law to ensure accountability for public money and that schools are required to be accountable for the financial assistance provided. Schools must agree to accept the financial assistance provided by the Australian Government on the terms and conditions set out in the agreement, the *Schools Assistance (Learning Together – Achievement Through Choice and Opportunity) Act 2004* and its regulations and guidelines. Funds may only be used in accordance with the arrangements outlined in the legislation.

17. As outlined above, State and Territory education authorities are responsible for the registration of independent schools in their jurisdictions. School registration processes include financial viability criteria, including for example, schools are required to provide five year budgets in the review process. The registration authorities also have established standards or criteria to evaluate the governance and management arrangements of schools. For those schools that also provide early childhood education and care, comprehensive licensing criteria also exist.

18. Most state and territory jurisdictions are also responsible for teacher registration. Teacher registration and the appraisal of teachers, their qualifications and attribute as part of this process provides another layer of scrutiny to ensure a high standard of professionalism within the schools sector.

Financial accountability

19. Schools must keep full and accurate financial records relating to the use of funds and the financial administration of the school. All income and expenditure must be identified in accounts with the preparation of financial statements in accordance with Australian Accounting Standards to enable the audit of records and documents in accordance with Australian Auditing Standards and generally accepted audit practices. Accounts and records relating to each school must be identifiably separate from the accounts and records of other institutions and schools must allow the Auditor-General, a member of the Audit and Investigations Group of the Department of Education, Employment and Workplace Relations (DEEWR), and any other person authorised in writing by the Australian Government Minister for Education to have full and free access at all reasonable times to accounts.

20. Schools must provide to DEEWR a certificate by a qualified accountant stating whether an amount equal to the amount funds provided each year has been spent for that year for the purposes for which it was granted.

21. Every year schools must provide DEEWR with a financial questionnaire in a form approved by the Minister that contains particulars of all gross income (of whatever form) received by the school for providing activities for the students enrolled at the school and all gross expenditure (whether recurrent or capital in nature) incurred by the school in providing activities for the students enrolled at the school. This financial questionnaire must be drawn from independently audited accounts and schools must provide a certificate from a Qualified Accountant verifying that the information included in the financial statements is true and correct.

22. Schools are also required to provide DEEWR each year with information on all students enrolled in the school, all teachers employed by the school and details of the characteristics of students enrolled at the school such as students with disabilities.

23. Funding agreements with State and Territory governments also contain rigorous financial accountability requirements.

Educational accountability

24. Schools are also obliged to commit to an extensive regime of educational accountability. Examples under the current legislation include: a commitment to the National Goals for Schooling; committing to achieving a range of performance targets

and performance measures; contributing to reporting in the Annual National Report on Schooling in Australia; commitment to common testing standards; implementation of the National Safe Schools Framework; reporting to parents and making publicly available school performance information. A number of Australian Government schools funding programs are not funded through the *Schools Assistance Act*, but rather as Annual Appropriations or through other legislation. Each of these programs, such as drug education, values education and indigenous education have separate compliance requirements including the provision of written reports and financial statements.

25. Further, the principal of an independent school is accountable to the board for the school's educational programs in terms of how they relate to the strategic directions and those of the school. Independent schools survive or fail on the merits of their performance. The freedom of students and their families to exercise choice in schooling is one of the most demanding forms of accountability for independent schools.

26. Recent statements by both the Prime Minister and Deputy Prime Minister indicate that the Australian Government is proposing to mandate even greater reporting and transparency requirements on all schools as part of its education agenda.

Other

27. 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 and territory registrar of associations. They must submit audited annual financial statements to these bodies, which are available for public scrutiny. They are also subject to regulation by the Australian Taxation Office.

28. As employers, independent schools must comply with legislation and regulations covering such issues as equal employment opportunity, industrial awards and occupational health and safety. As educational institutions they must comply with health, safety, privacy and child protection requirements as well as regulations relating to building and fire codes. For example, the *Disability Discrimination Act 1992* and associated Standards place significant requirements on schools.

Governance Arrangements

29. Independent schools operate in a competitive environment and as such need to be well managed and well governed. Schools are accountable to their stakeholders – parents, students, founders, the Australian Government, state and territory governments and are reliant on their continued support.

30. Like the members of a corporate board, independent school governors are individually and collectively responsible for compliance with the legislation, regulation and mandatory reporting requirements that apply to schools. Because independent schools are corporate entities or incorporated associations, governors are also responsible for making sure their school meets the same standards of business operation and reporting expected of other corporations.

31. In late 2007, ISCA conducted a survey to explore the range of governance models within the sector and identify typical board challenges. An online survey tool was employed and separate responses were sought from the Heads of school and the Chair of the school's governing body.

32. The results of the ISCA Governance Survey showed that the legal structure of the majority of schools was either an incorporated association under the relevant Associations Incorporations Act (45%) or a public company limited by guarantee under the Corporations Act 2001 (32%). The title of the majority of school governing bodies was either a Board (48%) or Council (40%). 96 % of school governing bodies were guided by written documentation such as a Constitution (81%) or written rules or guidelines (15%). School governing bodies appointed a range of standing or operation committees, the most common being finance related (73%) which were generally supported by terms of reference or guidelines (68%).

33. The findings from this research are positive and indicate that across the sector, independent schools have healthy governance arrangements in place. Schools are established under recognised legal arrangements, are guided by principles of governance, have policies in place to inform their deliberations, are supported by committees, have broad representation, and review their performance regularly. Chairs and Heads of school have a good understanding of their respective roles and responsibilities and are satisfied with the relationships in place. They are cognisant of the challenges facing them both now and in the future, and are keen to take action to address them.

34. ISCA represents the interests of the independent school sector on a national basis such as in relation to Commonwealth funding and representation on national policy making bodies. Its eight member State and Territory Associations of Independent Schools represent independent schools in their respective state or territory.

35. The Associations of Independent Schools (AISs) provide an extensive range of services to their member schools. The majority of AISs provide assistance to School Boards on governance issues. Assistance includes: supporting professional development for Board members; holding workshops, seminars and information sessions for School Boards; preparation and updating of support materials and resources such as policy and procedures manuals and handbooks; committees which provide governance advice; regular updates through newsletters and journals. For example, the Association of Independent Schools of Victoria has developed an online searchable resource 'Across the Board – Governance guidelines for independent schools' which is published on its website. The Association of Independent Schools of South Australia has introduced in 2008 a new chairpersons mentoring program. Independent Schools Queensland produces a quarterly journal titled 'Board Shorts' which provides useful governance information. Resources and information are available through the AIS websites.

COMMENT

36. The independent school sector acknowledges the benefits to the not-for profit sector of sound governance, standards, accountability and transparency in the use of public and government funds.

37. There is enormous diversity across the not-for-profit sector with regard to size, purpose, operation, governance, legal status and organisational structure. This diversity has resulted in significant complexity in the legal status, regulation, accountability and reporting requirements of these organisations. Confusion exists about the complexity of which laws apply and taxation arrangements. The complexity of the sector has significant implications for its regulation and accountability and the need for regulatory reform is acknowledged. There is general recognition within the sector that there is a clear need for a streamlined, co-ordinated approach to regulation and compliance which incorporates all levels of government and all relevant government agencies, as well as examining the appropriateness of laws designed for profit making companies to not-for-profit organisations. Independent schools further recognise that excessive and complex regulation and governance requirements can act as a disincentive to attracting individuals with the appropriate attributes to volunteer for school governance roles.

38. Streamlining of regulation and reduction of duplication of requirements within and across levels of government is also consistent with the current Council of Australian Governments agenda.

39. The streamlining of regulation and compliance should, however, recognise the diversity of the sector. Oversimplification of regulation should not result in a 'one size fits all' model which does not recognise the great variance in the size and structure of not-for-profit organisations.

40. Independent schools are encouraged that another outcome of the inquiry may be increased clarity around the contribution of the not-for-profit sector to the economy and society generally. The Australian Government has recognised the importance of the not-for-profit sector, including the contribution the sector can make to its social inclusion agenda. "The impacts of social exclusion are a serious blight on our prosperity and restrict Australia's future economic and social development. They include the economic costs of the numbers of people left out of the productive workforce due to the lack of skills now required to compete in a globalised, information based and technologically advanced economy....They include the high social costs of supporting excluded people and the cross-generational exclusion which occurs when the children of excluded families are likely to remain out of the workforce." (Australian Labor Party Election 2007 Policy Document – An Australian Social Inclusion Agenda)

41. "Bringing economic and social policy together to reduce disadvantage is going to take a massive effort of co-operation between the Commonwealth, the States and the not-for-profit sector. The Government recognises that education is critical to social inclusion. The fact is that school completion rates among low socio-economic groups in Australia are far too low. If we're going to compete with other nations we simply have to get more young people from disadvantage backgrounds to complete twelve years of schooling and go on to further education and training."(Deputy Prime Minister, the Hon Julie Gillard, speech to the ACOSS National Annual Conference 2007)

42. The independent sector is a significant provider of quality education to a growing proportion of Australian families. The independence of the sector has enabled it to respond flexibly to the needs of particular local communities and individual students. This flexibility enables independent schools to effectively respond to the diversity of student needs including those students at risk of social and economic disengagement such as students with special needs including disabilities and behavioural issues,

indigenous community schools and boarding schools for students from rural and remote areas. The student profile of independent schools has significantly changed in recent years reflecting the diversity of the student intake with students coming from the full spectrum of socio-economic backgrounds and growing numbers of students with disabilities and indigenous students. Independent schools, therefore, represent a significant contributor in the not-for-profit sector in promoting the Government's social inclusion agenda.

43. The Committee is asked to recognise the important role not-for-profit independent schools play in providing quality education across the spectrum of Australian society and the contribution these schools make to the goals of social inclusion. It is important that the outcomes of the Inquiry work to enhance and facilitate choice and diversity in among independent schools.

RECOMMENDATIONS

44. Having acknowledged the complexity of the not-for-profit sector and recognising the benefits of rationalisation and reform, the independent school sector is concerned to ensure that the Committee considers the following priorities when examining possible models and legal forms to improve the governance and management of charities and not-for-profit organisations.

1. Note the existing rigorous reporting and accountability framework for independent schools

As highlighted in this submission, independent schools as not-for-profit organisations in receipt of government funding and accountable to parents are already subject to a rigorous regulatory and compliance framework. Independent schools by their nature are dependent on effective governance and transparent accountability for their survival in a competitive environment.

2. The outcomes of the Inquiry should ensure that administrative burden of regulation is reduced and that compliance costs are not increased

As has been outlined above, the independent schools sector is already subject to a high level of government and public scrutiny. Independent schools are concerned about the effect of greatly increased government regulation and reporting that is now required as a condition of public funding. The independent schools sector currently enjoys an excellent reputation and a high level of public trust. While the independent sector is keen to support streamlining of the regulation of the sector, it is important to ensure that such reform will not result in increased regulatory burden and compliance costs. A priority for the inquiry should be to promote an environment which reduces the costs of regulation and compliance and duplication of effort. Regulatory reform needs to be proportionate – recognising that requirements should be appropriate to the size, function and turnover of organisations. The sector sees a priority for the Committee is achieving a balance between greater transparency and administration costs.

3. Greater certainty for governing bodies regarding compliance

Independent schools are keen to ensure that the outcomes of the Inquiry do not result in increased uncertainty and instability for the sector. Any significant changes to the

regulation of the not-for-profit sector have the potential to produce significant concern among organisations regarding their future organisation and viability. Independent schools are keen that the outcomes of the Inquiry provide governing bodies with increased certainty regarding the standards and legal requirements for their organisation and school governors can be confident that their organisation complies with all relevant laws.

4. No inadvertent outcomes regarding charity, taxation status and GST arrangements

The Committee in considering reforms must keep in mind the size, diversity and role of the sector and ensure that in streamlining the sector, no unintended changes to the status of organisations result. The charitable, taxation and GST status of not-for-profit independent schools is critical to their capacity to deliver affordable and appropriate education services to a diverse range of communities and students.

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