



Independent Schools
Council of Australia

Productivity Commission Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services

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. Others promote a particular educational philosophy or interpretation of mainstream education. Independent schools include:

- Schools affiliated with Christian denominations, such as Anglican, Catholic, Greek Orthodox, Lutheran, Presbyterian, Seventh Day Adventist and Uniting Church 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.



Regulatory and Accountability Environment of Independent Schools

State and Territory Registration

1. The first and focal point of government regulation of independent schools is the State and Territory school registration process, which provides an ongoing regulatory umbrella for operational, financial, educational and governance standards in independent schools.
2. School registration processes include financial viability criteria, for example in some states 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. Failure to meet these regulatory requirements entails school de-registration.
3. It is important to note that the primary role of state and territory governments is as regulatory authorities. This adds to the complexity in the quasi-market of Australian schooling provision. That is, the prime regulator of independent schools is their main 'competitor' for enrolments, as well as a source of funding.

Accountability environment

4. Unlike schools in other sectors, independent schools operate in a multi-dimensional accountability environment encompassing:
 - financial accountability
 - corporate accountability
 - professional accountability (of teachers and administrators)
 - educational accountability.
5. This environment is dynamic, comprising both mandatory and non-mandatory accountability mechanisms which are affected by a number of factors including;
 - increasing public expectations of accountability;
 - international trends – most particularly in regard to educational accountability;
 - political intervention; and
 - pressure from organisations questioning the entitlements of the non-government school sector.

Financial Accountability

6. The Australian Government has legislated for an extensive educational and financial accountability framework in respect of the funding it provides to independent schools. While the main funding stream is general recurrent grants (GRG), funds are also made available to non-government schools under a number of different programs, each with its own accountability arrangements.
7. For GRG funding, Government and Catholic school systems, as education authorities, have one agreement with the Australian Government that covers all the schools in the system. In the independent sector, each independent school is required to sign an individual funding agreement with the Australian Government which sets out the conditions under which financial assistance is provided.
8. 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 Act 2008* and its regulations and guidelines. Funds may only be used in accordance with the arrangements outlined in the legislation.

9. Other programs, such as Targeted Programs, Building the Education Revolution (BER) and the Digital Education Revolution (providing computers to students), each require their own funding agreement, thus significantly adding to the complexity of funding accountability for schools and to the administrative assistance from Associations of Independent Schools.

10. 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.

11. 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.

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

13. 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.

Corporate Accountability

14. A further key point to note in the accountability of independent schools is that as companies limited by guarantee or incorporated associations they are subject to the same financial and governance accountabilities as corporations. Independent schools must submit annual audited financial statements to either the Australian Securities and Investments Commission or the registrar of associations in their state or territory.

15. 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.

Professional Accountability

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

Educational Accountability

17. Schools are also obliged to commit to an extensive regime of educational accountability. The *Schools Assistance Act 2008* requires;

- national student assessments
- national reports on the outcomes of schooling

- reports on individual school information
- reporting to parents
- publication by schools of information relating to schools
- implementation of the national curriculum
- access to accounts, records and documents for monitoring purposes
- participation in evaluation of programs.

18. 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. The survival of independent schools relies heavily 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.

Current Regulatory Regime

19. In spite of the high level of accountability that applies to independent schools, their regulatory burden is increasing. While independent schools recognise the wider community's demand for accountability and the role of governments in ensuring that the public goals for education are met, they are concerned by several aspects of this growth in regulation:

- Inconsistency and/or duplication in regulation between the Australian Government and State and Territory governments
- The administrative and cost burden of meeting redundant regulatory requirements (e.g. Financial Questionnaire)
- The administrative and cost burden of over-regulation (e.g. unnecessary student data collection)
- The punitive nature of some regulations as they apply to the schools sector (e.g. FBT, GST)

20. The cost burden of regulation is of particular concern to independent schools as this must inevitably be borne by parents. In the government schools sector, the cost of regulation is borne by the whole community.

21. The Regulations attached to legislation covering Australian Government funding of schools for the 2005-2008 quadrennium marked a quantum leap in the level of regulation of independent schools. They increased the educational accountability on schools through new national benchmark testing requirements and the public reporting of a range of school performance measures. It also stipulated the way schools must report to parents on student performance.

22. ISCA notes that the Australian Government highlighted that a central feature of funding arrangements for the 2009-2012 quadrennium was to be a simpler performance information and reporting framework and indeed, the *Schools Assistance Act 2008* removes many of the onerous reporting requirements of the previous legislation. However, the Act includes a number of provisions that reflect the Government's priority for improving transparency and accountability of schools and school systems which may have significant administration and cost implications. These include increased requirements for data collection, the reporting of funding sources and the requirements for financial viability.

23. The sector is also concerned by the delay in providing the Regulations for the *Schools Assistance Act 2008*. Independent schools signed their funding agreements, without the benefit of the Regulations, in December 2008 and January 2009 and it is unlikely the Regulations will be available before April 2009.

Regulatory Concerns

Reporting of Funding Sources

24. Section 24 of the *Schools Assistance Act 2008* includes reference to largely undefined reporting requirements relating to the “funding sources” of non-government schools. While the Australian Government agreed to specify that individual donor income will not be required, this provision is being interpreted by many in the sector as a significant threat to the future autonomy and independence of independent schools. As the detail of the reporting requirements is not yet available, there is concern in the sector that this will entail an added administrative burden and also that sensitive financial information may be misused or misinterpreted.

25. Independent schools are already required to provide detailed annual reporting on their financial circumstances to the Australian Government via the Financial Questionnaire and, depending on their governance structures, to the Australian Securities and Investments Commission.

26. Increasing the reporting requirements of schools would appear contrary to COAG’s stated position with regard to focusing on educational outcomes rather than inputs and reducing the regulatory and compliance burden. As part of its regulatory reform agenda, COAG has agreed to maximise the efficiency of regulation by, inter alia, reducing the burden of regulation and compliance costs (COAG meeting, 26 March 2008 Communiqué). In addition, the validity of continuing to require a Financial Questionnaire return has been questioned in recent years by the Productivity Commission and others.

Financial Questionnaire

27. Prior to 2001, data from the Financial Questionnaire was required for the allocation of general recurrent funding under a resources model that took account of school income. However, the introduction of a needs-based funding model in 2001, which derived the socio-economic status of a school community from ABS Population Census data, has made this use of the Financial Questionnaire redundant.

28. The Questionnaire is not required to prove a school’s financial standing as this requirement is met through both school registration by State and Territory governments and the provision of annual audited financial statements. Nor is it required to account for the spending of government funds on the agreed purpose, as this requirement is satisfied by a variety of certified statements from accountants, auditors, architects and other suppliers.

29. The Financial Questionnaire represents a substantial administrative burden for independent schools as it requests information in a way that varies from the standard presentation of data in audited accounts. Its redundancy makes it an unnecessary cost burden for independent schools and their parent communities.

Financial Viability

30. Section 15 of the *Schools Assistance Act 2008* requires non-government schools to be ‘financially viable’ in order to receive government funding. While the independent sector acknowledges the obligations on the Minister to ensure that Australian Government funding is not directed to organisations that are not financially secure, ISCA is concerned that the process that has been put in place to measure financial viability does not take into account the way the sector operates financially and places excessive reporting and corrective processes on some of the sector’s smallest and neediest schools.

31. The Financial Health Assessment of Non-Government Schools Framework uses a number of indicators which focus on debt levels and servicing of borrowings. On average, parents and donors in independent school communities contribute 82 per cent of funds for capital developments such as school buildings, grounds and equipment. Often these costs are covered in the interim by borrowings, and depending on the capital development of a school, debt levels may vary significantly over time.

32. Indicator 12, the percentage of government grants as a percentage of recurrent income, will also be problematic for those small community schools such as Indigenous community schools who have extremely limited capacity to raise private income but their financial viability is maintained because of their capacity to generate ongoing government support.

33. Schools assessed as high risk (Group 3), will be required to engage the services of an independent qualified auditor to conduct a full audit and assessment of the school's finances and assessment of the school's governance structure and practices, and to develop a Management Plan for the school. The Management Plan may be developed by the independent qualified auditor or by a consultant or administrator approved by the auditor.

34. Schools will be required to meet the costs associated with the implementation of these measures (including the costs of any external auditors, consultants, or administrators). Clearly for schools operating on small margins, further unexpected costs will be a significant financial impost without necessarily resulting in any change in their operations. Small indigenous community schools will always have limited capacity to raise private income so incurring additional costs to examine this issue will represent a significant additional expense with no appreciable benefit.

CRICOS Registration

35. ISCA considers that requiring schools to be separately registered to enrol full-fee paying overseas students is redundant. As noted above, all independent schools are required to be registered by their State or Territory authority to operate as schools. The additional requirement for schools to also be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) and to comply with all the requirements of the Educational Services for Overseas Students Act 2000 (ESOS Act) is overly burdensome and complex, and can even act as a disincentive for schools to consider overseas students as a potential source of student enrolments.

36. The requirements of the ESOS Act and the National Code of Practice for Registration Authorities and for Providers of Education and Training to Overseas Students (the National Code 2007) are extremely complex and effectively require a dual system of student administration in areas such as attendance and monitoring student progress. While the sector understands that the legislation has a valuable consumer protection role, the administrative cost to schools is considerable.

Collection of Student Background Characteristics

37. As a condition of funding, the Australian Government requires schools to collect substantial background data on students. While both schools and governments find data valuable for planning, performance monitoring and accountability purposes, the burden of collection is extremely high. The decision by the Australian Government to contribute to the costs of implementing the data collection requirements provides some evidence that there are substantial costs being met by independent schools.

GST and FBT Arrangements

38. Independent schools are not-for-profit entities with charitable status in recognition of their role in education provision. While this entitles schools to exemption under the previous sales tax

arrangements, schools must now comply with a range of GST and FBT arrangements that are unnecessarily punitive in an educational context.

39. An example is the application of FBT in the case of boarding school supervisory staff. Schools pay FBT for the accommodation of these staff in boarding houses. This may be charged at the same “harbourside” rates as the suburbs in which these schools are located. A further example is the application of GST to boarding school meals.

40. The result of such anomalies is that the cost of education for families in rural and remote areas has increased without any offsetting educational benefit and there is greater administrative complexity for schools.

Duplication and inconsistency

41. The issue of duplication in reporting between the Australian Government’s requirements and those of the State and Territory governments is of concern to the independent school sector.

42. The impact of the introduction of the Australian Government’s regulatory regime for schools in 2005 was compounded for independent schools by some States and Territories introducing parallel reporting and regulation regimes as a means of meeting the Commonwealth requirements. These regimes cover not only the government school sector, but have also been extended to the non-government sector. This means that in some states and territories independent schools must comply with two sets of reporting requirements which, while similar, are sufficiently different in form and detail to constitute a double reporting burden.

43. This duplication could be minimised if State and Territory governments and the Australian Government were to agree on the essential reporting requirements to meet their respective responsibilities.

44. The same is also true of legislation governing the enrolment of full-fee paying overseas students. The ESOS Act sets out standards for all institutions, including schools, which enrol FFPOS. However some States and Territories have their own legislative requirements which contradict the national legislation e.g. the criteria for allowing student transfers.

45. Representations and consultations to either bring State and Territory legislation in line with the ESOS Act or to rely solely on the ESOS Act have to date been unsuccessful.

Cost Burden

46. Regulation and compliance is adding significantly to the cost of independent schooling. This burden falls disproportionately on smaller schools and non-systemic schools that do not have the support of centralised administration or the necessary economies of scale to absorb the cost of increased regulation.

47. The increase in numbers of non-teaching staff across the sector in recent years in part reflects the increasing administrative burden for schools. There are clearly substantial resources being engaged by schools to manage the cumulative administrative burden of regulatory and compliance requirements, including duty of care, child protection, occupational health and safety and other workplace regulations as well as specific fiscal, governance and education-related regulations.

48. It should also be noted that in independent schools the cost burden of regulation is inevitably borne by parents. In some cases this is a direct cost. For example, in most states students in independent schools must pay for the cost of sitting national tests in key subject areas while in government schools this cost is borne by the whole community.

49. It is the view of the independent schools sector that governments should seek to minimise the regulatory costs of schooling so that maximum funds can be used to support the educational achievement and welfare of students.

ISCA
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