



Independent Schools
Council of Australia

LT214 B

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Mr Bob Eckhardt
Regulation Taskforce
3389
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Dear Mr Eckhardt

Independent Schools and Government Regulation

Further to our meeting with Gary Banks, Rod Halstead, Angela McRae and yourself on 4 November 2005, I have set out below some of the key points I made during the meeting. I hope you find this useful in preparing your report.

1. 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 of 1057 schools (including Catholic independent schools) and almost 456,700 students accounting for some 14 per cent of total Australian school enrolments. The sector's share of secondary enrolments is over 16 per cent nationally and in several capital cities over 20 per cent.

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 20 per cent of schools in the independent sector.

2. Accountability Environment of Independent Schools

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
- social accountability

This environment is dynamic, comprising both mandatory and non-mandatory accountability mechanisms which are affected by increasing public expectations of accountability; international trends – most particularly in regard to educational accountability; political intervention; and ideologically driven pressure from interests hostile to non-government schooling providers.

The first and focal point of government regulation of independent schools is the state/territory school registration process, which in most states and territories provides an ongoing regulatory umbrella for operational, financial, educational and governance standards in independent schools. Failure to meet these regulatory requirements entails school de-registration.

The primary role of state and territory governments in the regulation of independent schools is important to note, not least because of the complexity it creates in the quasi-market of Australian schooling provision, that is, the prime regulator of independent schools is their main ‘competitor’ and also a source of funding.

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.

It should also be noted that independent schools meet stringent conditions for government funding and accountability requirements related to the expenditure of government funding.

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 in and transparency of organisations and their operations, and the role of governments in ensuring the public goals for education are met, they are concerned by several aspects of this growth in regulation:

- The punitive nature of some regulations as they apply to the schools sector (eg FBT, GST)

- Inconsistency and/or duplication in regulation between the Australian Government and state/territory governments
- The administrative and cost burden of meeting redundant regulatory requirements (eg Financial Questionnaire)
- Lag time between the deadline for completion of funding contracts and the provision of regulations linked to Australian Government schools funding for the 2005-2008 quadrennium
- The administrative and cost burden of over-regulation (eg unnecessary student data collection)
- The undermining of schools' educational autonomy and their freedom to differentiate as distinctive educational communities in a quasi-market environment

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.

The following sections expand on several of these points.

3. New Regulatory Regime

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. The new regulatory regime exponentially increases the educational accountability pressures on schools, through new national benchmark testing requirements and the public reporting of a range of school performance measures. It also stipulates the way schools must report to parents on student performance. (The new requirements are set out in *Schools Assistance (Learning Together – Achievement Through Choice and Opportunity) Act 2004* and *Schools Assistance (Learning Together – Achievement Through Choice and Opportunity) Regulations 2005*.)

Many independent schools find aspects of the new requirements antagonistic to their educational philosophies and pedagogical practices and see the new measures as an indirect means of forcing greater uniformity in classroom practice. Compliance therefore endangers existing school cultures and the ability of schools to differentiate themselves as distinctive learning communities, and fails to deliver the diversity in schooling options that families and students increasingly demand.

Given that independent schools survive or fail on the merits of their performance, the sector is of the opinion that they are suffering 'collateral damage' from universally applied regulations aimed at forcing quality gains in particular aspects of Australian schooling. They believe the effect of the regulations could be to diminish the incentive to quality provision provided indirectly through the quasi-market. There is evidence that market forces have contributed significantly to the quality of Australian schooling and the sector is of the opinion that regulation that undermines this effect will be counter-productive to the aims of the Government.

The sector is also concerned by the timing of the introduction of the Australian Government's new regulatory regime.

While the Australian Government had announced the intent of this regime at the time of the introduction of the funding legislation in June 2004, the regulations had not been developed and stakeholder consultations on the regulations were still underway when in December 2004 independent schools faced the necessity of signing their funding contracts or not having funds to meet staff payments in January 2005. State and territory governments were able to hold off from signing their agreements until mid-2005. The regulations were not legislated until late August 2005 and negotiations with the federal Minister for Education over more contentious aspects of the regulations were not

finalised until November 2005, almost one year after independent schools signed their funding contracts.

4. Duplication and inconsistency

The increased burden of the Australian Government's new regulatory regime for schools was compounded for independent schools by the response of state and territory governments to the new requirements (which also apply to government and Catholic systemic schools although in a slightly different form because of their centralised form of governance). Some states and territories, in anticipation of the new regulations or as a consequence of them, introduced parallel reporting and regulation regimes for their own systems as a means of meeting the Commonwealth requirements. However, because state/territory governments are the prime regulators of non-government schools these regimes 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 new reporting requirements which, while similar, are sufficiently different in form and detail to constitute a double reporting burden.

This duplication could be minimised if state/territory governments and the Australian Government were to agree on the essential reporting requirements to meet their respective responsibilities.

5. Over-regulation

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 in some instances warrants sampling rather than universal data collection. 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.

6. Redundant Regulation

In 2001 the Australian Government introduced a new funding system for the allocation of general recurrent funding to non-government schools. The new system is a needs-based model in which need is determined by the socio-economic status of a school community. This status is derived from Census data.

Prior to 2001, Australian Government funding was allocated under a resources model that took account of school income. This required the reporting of school financial data, which was collected by the federal Department of Education through the Financial Questionnaire for Non-Government Schools.

Submission of the Financial Questionnaire is still a condition of funding for independent schools even though this data has not been required for funding purposes for five years. The Questionnaire is not required to prove a school's financial standing as this requirement is met through both school registration by state/territory governments and the provision of annual audited financial statements. Nor is it required to account for the spending of government funds on the contracted purpose, as this requirement is satisfied by a variety of certified statements from accountants, auditors, architects and other suppliers.

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.

7. Collateral Consequences

Independent schools are not-for-profit entities with charitable status in recognition of their role in education provision. While this entitled schools to exemption under old sales tax arrangements, schools must now comply with a range of GST and FBT arrangements that are unnecessarily punitive in an educational context.

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.

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.

8. Cost Burden

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.

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.

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, students in independent schools must pay for the cost of sitting benchmark tests while in government schools this cost is borne by the whole community. The introduction of further national benchmark testing as outlined in the *Schools Assistance Act* will mean further costs for parents of students in independent schools to comply with Australian Government educational accountability requirements.

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.

Yours sincerely

Bill Daniels
Executive Director