

Independent Schools
Council of Australia

LT006

25 January 2012

The Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
Parkes ACT 2600

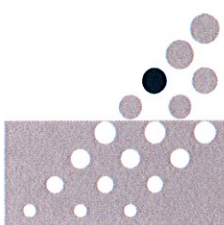
Sent by email to: nfpreform@treasury.gov.au

Submission on the Review of Not-For-Profit Governance Arrangements Consultation Paper

The Independent Schools Council of Australia (ISCA) welcomes the opportunity to respond to the Consultation Paper released recently by The Treasury on the Governance Arrangements for Not-For-Profit organisations. ISCA is the peak national body covering the independent schools sector which also comprises the eight state 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 in Australia are recognised for their leadership and innovation in school education and as a result have a reputation as providers of quality education. Their success is underpinned by their autonomy as self-managing schools, or as part of small systems. Good governance is fundamentally important for the maintenance of a high quality independent schools sector. In late 2007, ISCA conducted a survey to explore the range of governance models within the sector, identify typical board challenges, and inform the future development of resources and provision of services by AISs and ISCA. The survey was completed (or partly completed) by 332 Heads of school and 206 Chairs of the school governing body. These responses represent approximately 31% of Heads of school and 19% of Chairs from the 1078 independent schools in Australia. A report on the research is attached.

Additionally, almost all independent schools in most states and in both territories choose to become members of their Association of Independent Schools (AIS). AISs provide a range of services to member schools including extensive governance training opportunities. In addition to representing the views of the independent schools sector at state and territory level, they administer funding provided by the Australian Government on a range of targeted programs, as well as providing professional development, advice and information. The majority of AISs and ISCA have charitable institution status.



Structure of Independent Schools

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 fully 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 (e.g. Yiparinya Indigenous School).

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 2009-13 which state under the 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*
- 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 in activities that generate 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. 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.

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 which 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.

Current School Regulatory Environment

Independent schools have a greater range of accountabilities than any other type of school in Australia due to the complex mix of their responsibilities to stakeholders, governments, authorities and their legal obligations as incorporated bodies.

Independent schools must meet the criteria established by their state or territory government for registration as a school and for their accreditation for credentialing of students. School registration is reviewed on an ongoing basis, which ensures that the school's curriculum and governance complies with state or territory government requirements.

State and territory governments provide some funding support for independent schools, and schools must comply with any related conditions of funding as well as reporting and accountability requirements.

The Australian Government is the source of most of the public funding for independent schools. Comprehensive conditions and accountability requirements apply to this funding which are specified in the *Schools Assistance Act 2008*, Schools Assistance Regulations, Administrative Guidelines: Australian Programs for Non-government Schools 2009 to 2013 and the Funding Agreement between the Australian Government and the approved school authority.

Schools are obliged to work co-operatively with their state or territory government to support that government in fulfilling its obligations under the National Education Agreement. Independent schools must also agree to support the achievement of the National Declaration on Educational Goals for Young Australians and the Council of Australian Governments (COAG) outcomes for schooling. Governments have acknowledged through the Declaration on Educational Goals for Young Australians that “Together, all Australian governments commit to working with all school sectors and the broader community to achieve the educational goals for young Australians.” One of the action areas for achieving these goals articulated in the Declaration, is developing stronger partnerships.

Schools must participate in all specified National Student Assessments, participate in the preparation of the National Report on Schooling in Australia, 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, Employment and Workplace Relations (DEEWR) and the Australian Curriculum, Assessment and Reporting Authority (ACARA). Schools are also required to report to parents in compliance with legislated requirements, report annually and publish specified information relating to aspects of the school and its operations and implement the national curriculum.

Independent schools must submit to DEEWR annually a Financial Questionnaire. The Financial Questionnaire is an annual collection of financial income, expenditure and liabilities from all non-government schools receiving Australian Government general recurrent grants. The Financial Questionnaire data draws on a school’s audited financial statements. Schools are also subject to scrutiny of their financial operations including the financial viability and funding sources of the school. Independent schools must demonstrate that the funds received under each Australian Government funding program have been expended appropriately. This includes providing the Australian Government with documentation certified by qualified accountants regarding the expenditure of Australian Government grants. All accounts, records and documents as well as free access to each campus of a school must be available to the Auditor-General or DEEWR officers.

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 or territory registrar of associations. They must submit audited financial statements to these bodies which are available for public scrutiny. 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.

For most independent schools (unless they are part of a school system), decision-making takes place at school level through the school board or council and the role of the principal. This imposes far greater accountability to stakeholders at the school level than is the practice in systemic schools. The school board plays a key role in all forms of accountability. The board requires accountability for all the activities of the school, and is itself accountable to the school's immediate stakeholders, to the community at large, and to governments aiding or regulating the operation of the school.

The autonomy of independent schools enables them to respond flexibly to the needs of their local communities and individual students. Individual schools operate in an environment of choice and diversity. The forces that operate in this environment impose an imperative for schools to be aware, innovative and responsive to change in order to ensure schools continue to meet the educational needs of students and expectations of parents.

It should be noted that the same conditions and requirements apply to all independent schools irrespective of their level of government funding, and that government funding represents only a portion of the income of independent schools.

The My School web site (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.

Structure of Future Governance Arrangements under ACNC

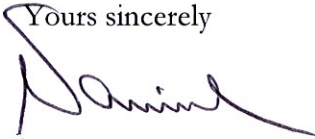
ISCA generally supports the proposal by ACNC to promote principle-based governance arrangements for the NFP sector. However the unique and already transparent nature of the independent schools sector should be recognised as the ACNC progresses its NFP reform agenda. In particular, ISCA would like to ensure that the following areas are considered in the development of future governance arrangements applying to schools:

- Any new arrangements should at least be consistent with the current governance, duties, accountability and reporting arrangements required by ASIC, associated corporation's law and DEEWR under their current funding agreements.
- Schools should be seen as low risk NFPs and therefore be excluded from the initial regulatory environment and subject to a phased in approach under the ACNC's regulations.
- The public disclosure of the remuneration of principals and senior staff would be seriously detrimental to the good management of a school.
- Any mandated ACNC operational requirements must be consistent with current federal and state operational requirements for all schools.
- The "one-stop-shop" regulatory and reporting approach advocated by the government could be problematic for the education sector as there are already established structures in place at multi jurisdictional levels.
- There will need to be extensive consultation with the education sector in regard to suitable standardised regulations applying to the operations of schools and the delivery of education services.
- Independent schools should not be disadvantaged in the application of ACNC regulations given that government schools will be exempt entities.
- There would be little public benefit in duplicating the My Schools website with another web based reporting facility covering schools.
- Schools are already burdened with substantial compliance costs and any additional requirements would place further demands on the resources of school communities.

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 economic circumstances, 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 funding agreements with the Government. Any additional levels of uncertainty can have a significant impact on the operating environments for independent schools.

ISCA looks forward to further consultation on these initiatives.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bill Daniels', with a long, sweeping underline that extends to the right.

Bill Daniels
Executive Director