



**ASSOCIATION OF INDEPENDENT SCHOOLS OF
VICTORIA INCORPORATED**

SUBMISSION

TO

SENATE ECONOMICS COMMITTEE

ON

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

29 AUGUST 2008

ABOUT THE ASSOCIATION

Association of Independent Schools of Victoria (AISV) was established in 1949 to represent, promote the interests of and provide services to Victorian independent schools. More than 98 per cent of all independent schools in Victoria are members of the Association and member schools enrol more than 99 per cent of all independent school students in Victoria. The Association's membership includes more than 215 schools educating over 120,000 students.

As member schools are individual legal entities, the Association is not a system authority but is a non-profit service organisation to its membership. As part of this role, the Association represents the interests of its Member Schools to governments and the community on a wide range of issues.

In recent years the Association has defined itself as a policy leader, underpinned by a strong research agenda and an evidence-based approach to education improvement and development. The Association has been instrumental in innovative approaches to educational reform, has trialled and piloted several significant projects and is now recognised as an important contributor to state, national and international educational thinking and practice.

PURPOSE OF THIS SUBMISSION

The Association's member schools, by virtue of operating as registered schools, are all not-for-profit entities. A significant number of schools also control and operate associated entities including building, scholarship and library funds which are designated as deductible gift recipients.

The educational services provided by members of the Association are highly valued in the community. As a result independent schools often attract financial support from parents and the general community which might either not be subject to tax as income for the school or may constitute a deductible gift. Independent schools are in receipt of government funds to varying extents.

This submission outlines the high levels of accountability and transparency to which independent schools are currently subject under the arrangements which currently apply to schools in Victoria. To a significant extent the ongoing success of independent schools relies on their accountability and transparency to their school community and the quality of their governance.

Any changes to the regulatory regime applying to schools as not-for-profit entities who may also operate DGR funds should first seek to lessen the compliance and reporting burden and the substantial costs in both time and money associated with it. Further, any proposal for change in this area, particularly for schools, should clearly establish the resultant benefits for the community, government and schools in light of the additional costs that are likely to be imposed by further regulation.

THE SUBMISSION

TERMS OF REFERENCE

The terms of reference for this inquiry have been published as follows:

- (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.

RESPONSE

Section 1 – Relevance of Inquiry to Independent Schools

Independent schools as educational institutions operate within the regulatory regimes governing not-for-profit entities, DGR funds and as registered schools in receipt of government funding.

All independent schools in Victoria, as a requirement of their operation as registered schools and receiving government funding, are not-for-profit entities.

As a consequence of being in receipt of government funds schools are required to submit detailed financial and operational information to both the state-based school registration body and the Australian Government department responsible for the administration of funding for schools.

Independent schools, by virtue of the special nature of their activities, may engage in activities which are charitable and in limited instances even be established as charities, though the vast majority of schools are not charities.

Schools frequently also have associated entities which have deductible gift recipient (DGR) status. Such entities typically include three types of funds: building; scholarship and library funds. Only donations made to such school-related funds with DGR status are tax deductible for the donor. Donations made directly to schools for general educational purposes are not tax deductible for the donor.

Section 2 – Transparency and Accountability

Independent schools are currently subject to high levels of transparency and accountability in their operations and conduct.

Funding for independent schools is not guaranteed and their future viability depends on their ability to attract students and maintain their enrolment levels in a competitive environment.

The operations and performance of independent schools must justify the ongoing support and confidence of parents, students and the wider school community. Independent schools must therefore deliver standards of transparency and accountability that accord with the expectations of parents and supporters which may be above and beyond any regulatory requirement. This frequently involves the publication of detailed annual reports and reporting to parents.

In addition to competitive pressures and the need to meet the expectations of the schools community independent schools are also subject to a range of regulatory reporting and accountability mechanism. The most significant sources of these requirements are described below.

Government Funds

As a condition of their receipt of government funding schools are required to make detailed financial and operational information available to the government, parents and the public. The reporting requirements placed on individual schools as result of receiving government funding include but are not limited to: a financial questionnaire; student addresses for calculation of SES; school census data; attendance reports; compliance with national schooling principles; satisfaction surveys and an annual report.

Amongst the extensive reporting and compliance requirements the “Financial Questionnaire” in particular requires schools to provide a detailed account of the school’s financial activities and the expenditure of government funds on an annual basis. The extensive and detailed nature of the questionnaire ensures a high level of transparency and accountability in respect of government funds and their use by schools. School staff dedicate what may amount to weeks of effort to the preparation of these questionnaire responses where they vary from accepted accounting standards. This represents a significant compliance cost for schools and consumes resources that might otherwise be used to improve educational outcomes for students.

In relation to funding received from the Victorian Government schools are required to comply with a range of accountability and reporting mechanisms including: providing evidence of their not-for-profit status; submission of an independently audited report that government funding has been used in accordance with the relevant terms and conditions; commit to the Victorian Government’s educational goals and targets, and demonstrate that they meet the conditions for initial and ongoing registration as a school. Schools may be required to report against any or all of these accountabilities at any time if requested by the Victorian Government.

Reporting Requirements of Operating Entity

Consistent with the nature of independent schools as autonomous or semi-autonomous entities independent schools adopt legal structures that best serve their needs as a school. These needs obviously include the fulfillment of their legal obligations.

The legal structures adopted reflect the size and scope of individual school operations and the diversity of the independent school sector which includes church run and owned schools, systemic schools and wholly autonomous schools.

Many schools are constituted as companies limited by guarantee. As a consequence these schools are required, like other companies, to lodge their accounts with the Australian Securities and Investment Commission (ASIC) each year. Such accounts must be prepared in accordance with the relevant accounting standards and are available to anyone who wishes to obtain and inspect them.

Schools operating in this way are, like other registered companies, subject to a very high standard of accountability and transparency in reporting their financial affairs to ASIC.

The scope of these accounts filed with ASIC will, in accordance with the relevant accounting standards, incorporate the activities of wholly associated entities. The activities of the school in relation to fundraising and the operation of DGR funds can therefore be covered in a school's published accounts in this way.

Deductible Gift Recipient Funds

Independent schools do not enjoy the benefits of high levels of financial support available to government schools. In response to this situation independent schools attempt to obtain additional financial resources from the school community through funds which have DGR status.

Schools that operate DGR funds are subject to the existing compliance requirements of the Australian Taxation Office in relation to the establishment and operation of these funds.

One consequence of the legal status of many schools as companies limited by guarantee and their consequent ASIC filing requirements is that where required by relevant accounting standards DGR funds are incorporated into financial accounts that are published.

Additionally, schools have strong incentives toward transparency, accountability and good governance in the operation of DGR funds in order to attract ongoing support from parents and other potential supporters of the school. As a result of this incentive clear examples are available of schools delivering levels of transparency and accountability in reporting that far exceed legal requirements.

Section 3 – Governance

There is widespread consensus that high standards of governance in an independent school facilitate good performance in the operations of a school. It is recognized that the ongoing sustainability and long-term success of each independent school relies on the quality of governance processes and frameworks being present in a school.

To this end AISV has initiated a range of initiatives to assist schools develop robust governance frameworks and processes. For example AISV provides support and training to schools to maintain and improve governance processes at the individual school level.

The relationship between good governance and the success of a school represents a real and genuine incentive to independent schools to maintain high governance standards and address opportunities for improvement.

Any initiative that imposes additional compliance burdens in relation to the governance of independent schools is unlikely to provide any net benefit for independent schools or students.

Section 4 – Costs of Regulation

Any addition to the compliance burden for schools will have implications in terms of compliance costs. Member schools already report expending sizable resources merely complying with reporting requirements in relation to their operations. Resources consumed in this way mean that fewer resources are available to schools to achieve better educational outcomes for students.

Independent schools are committed to high levels of transparency and accountability in their operations. This is fundamental to maintaining the support of their school community.

On the whole the cost of complying with regulations, whether related to school, not-for-profit, DGR or charitable status represents a significant impost on schools and their staff. Any reform proposal in this area should recognise the high levels of accountability and transparency that independent schools strive to achieve and attempt to lessen the compliance burden for schools.

The AISV has compiled experiences from independent schools which demonstrate that the cost of regulation and red-tape has significant consequences for the establishment, growth and development of independent schools.

In general independent schools by their community based nature can be thought of as emerging social enterprises. Hence any addition to the current compliance and regulatory burden would result in further obstacles to the establishment and development of independent schools as emerging social enterprises.

Section 5 – Conclusions

AISV would in principle support further reform initiatives aimed at improving transparency, accountability and governance of not-for-profit entities and charities subject to the following points:

- no addition be made to the compliance burden facing schools;
- the compliance burden currently falling on schools be reduced wherever possible so that resources can be directed to educational benefit;
- the important place of independent schools in their community as social enterprises be recognised;
- existing incentives for independent schools to maintain high levels of transparency, accountability and quality governance be recognised;
- the public benefit be clearly established for any reform as compared to the cost it imposes on schools, and
- any regulatory approach favour self regulation for schools given school-specific accountability regimes that are in place.

Section 6 - Recommendations

Recommendation 1

That reforms be sought to reduce the compliance burden currently imposed on schools in the course of delivering a high level of transparency and accountability to their stakeholders. Such reforms might seek to eliminate the duplication in requirements for registration and reporting at state and federal levels or utilise existing reports such as those filed with ASIC as acceptable forms to meet other reporting requirements.

Recommendation 2

That any proposed reform to the regulation of charities and not-for-profit entities that affects the compliance requirements applying to schools clearly establish a net public benefit that justifies the additional costs that are likely to be imposed on schools as a result.

Recommendation 3

That any policy initiatives designed to improve governance, accountability and transparency acknowledge that the continuing viability and success of independent schools relies on individual schools exhibiting high standards across each of these areas. Hence any initiative should as a starting point adopt 'light-touch' or self-regulation approaches in relation to schools.

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