

Coalition Senators' Report

The necessity to have the *Schools Assistance Bill 2008* and the *Education Legislation Amendment Bill 2008* passed before the Parliament rises in December limits the opportunity to examine these important policy developments in the time available. It is of limited comfort to Coalition senators that the committee may be able to monitor this legislation in operation over the next two years.

During this inquiry non-government schools' representatives expressed concern that government funding for the 2009 school year is being linked to the passage of these bills, with the detail of many of the policies they will usher in unexplained to the sector at this stage. The Chief Executive of the Association of Independent Schools of Victoria made this analogy:

I had a principal from a school phone me the other day and say, 'We tell our students not to sign up to mobile phone plans unless they absolutely know what they are signing up to, and here we are with something that is far more important to us and we're expected just to sign without knowing.' I think that people are extremely concerned about signing to deliver something when they do not know what it is.¹

Schools Assistance Bill 2008

Coalition senators have a number of concerns about issues foreshadowed in the *Schools Assistance Bill 2008* (the bill).

There are four main areas of concern which interested parties to the legislation raised with the committee, and which are referred to in report. They are:

- Changes to the grounds upon which the Minister can elect to refuse or delay payment, which makes it easier for the Minister to do so (section 15);
- The new requirement in school funding agreements to comply with the National Curriculum by 2012, as specified in regulations (section 22);
- Alterations to the reporting requirements for schools, particularly new requirements relating to information about financial viability and funding sources (section 24); and
- Removal of the previous Government's new non-government schools establishment grants (section 100).

¹ Ms Green, *Proof Committee Hansard*, 19 November 2008, p. EEWR 39.

Ministerial discretion with regard to payments

Coalition senators have concerns with section 15 of the Bill.

Section 15 specifies grounds upon which the Minister may refuse to authorise or delay a payment to a non-government school. These grounds include if the school is being wound up (s15(a)) or is unable to pay its debts (s15(b)).

Section 15(c) of the Bill provides for new reasons for such refusal or delay in the case that:

c) if a law of the Commonwealth or a State requires the body or authority to be audited – the relevant audit:

(i) is expressed to be qualified; or

(ii) expresses concern about the financial viability of the body or authority.

Coalition senators are concerned that this clause goes beyond ensuring payments are made only to financially-viable schools.

The clause refers to situations where the relevant audit "is expressed to be qualified". The inquiry heard that there may be circumstances, other than those which go to the financial viability of a school, which lead to an audit being qualified. One example is a hesitation about a school model, whether a financial hesitation or otherwise.

A qualified audit does not necessarily signal that a school's financial situation is precarious enough to warrant the Minister refusing or delaying payment.

Geelong College was concerned at the broad power conferred on the minister by this section:

While section 15 of the Bill directly refers to financial viability, part (i) is wide enough to allow the Minister to interfere with payments to a school for **any** issue giving rise to audit qualification.

The Geelong College believes that to thus empower a Minister when an audit qualification arises from non-viability factors is unreasonable and inappropriate.²

Coalition senators believe that a "qualified audit report" covers too broad a range of circumstances to be a useful criterion for refusing to make payments to a school. The proposed clause would allow the Minister to delay or refuse funding even though a school is in fact financially viable.

² Geelong College, *Submission 16*, p. 2.

The Association of Independent Schools (Victoria) gave convincing testimony at the public hearings illustrating how schools might be inappropriately captured by this clause.

Recommendation 1

Recommend that paragraph 15(c)(i) be removed from the bill.

Compliance with the National Curriculum

Coalition senators have concerns with section 22 of the Bill.

Section 22 sets out the new requirement in school funding agreements to require the relevant authority for the school or system to ensure that the school, or each school in the system, implement the National Curriculum by 2012, as specified in regulations.

Section 22 reads as follows:

S.22 – Funding agreements – national curriculum

- (1) A funding agreement for a non-systemic school, or an approved school system, must require the relevant authority for the school or system to ensure that the school, or each school in the system, implements the national curriculum prescribed by the regulations for primary education or secondary education (or both, as applicable).*
- (2) The requirement mentioned in subsection (1) must be satisfied on or before 31 January 2012.*

Testimony was received by the Committee both in writing and at the public hearing regarding concerns by schools with this section, concerns exacerbated in particular by the lack of guidance to date (so far, only the framing documents in each subject area have been released for consultation) as to what the National Curriculum will look like.

This leaves a major conceptual gap in this legislation. Coalition senators are concerned that the Bill seeks to tie school funding to acceptance of a National Curriculum that is not yet drafted. Even if there were no controversy about the apparent ideological bias of some of the framers of the National Curriculum, this clause would still elicit concern.

Section 31 of the previous legislation required schools to commit to curriculum-related activities, such as Statements of Learning in five areas (English, mathematics, science, civics and citizenship education, and information and communications technology), but not to specific curriculum.

Initially, the National Curriculum will cover only four discipline areas being those of Maths, Science, History and English. One of the issues that arise is how prescriptive the curriculum content in these discipline areas will be. Will it be prescriptive in

terms of content and materials, or alternatively, will it be a framework within which schools can determine content? This question is yet to be answered.

This raises obvious issues for schools offering alternative curricula such as the International Baccalaureate or the University of Cambridge International Examinations. These schools will have to comply with the national curriculum in the four stated subject areas whilst teaching their own curriculum in other subject areas. Students cannot however qualify for an International Baccalaureate Diploma, for example, without completing all components of the Diploma including International Baccalaureate specified curriculum in the 4 disciplines covered by the National Curriculum.

Schools offering alternative educational philosophies, such as Steiner or Montessori schools, will similarly face difficulties in meeting the requirements of this section.

Coalition senators believe that diversity in curriculum, teaching philosophies and course offerings is a profound strength of the Australian education system. These reforms seem to depart from that rich historical development. As John Marsden, the principal of Candlebark School in Victoria, put it:

As an author who - and I'm afraid this is going to sound pompous - has always promoted the interests of young people, and more importantly, as a teacher and school principal, I'm a bit stunned to think that the federal parliament might contemplate passing a Bill which could deprive schools of the right to develop their own curricula, and to innovate and develop special, school specific learning programs. Good grief! Schools should be massively encouraged in the development of new curricula and innovative programs. Anything else will lead to a moribund system, and will threaten progress in this most important area of our society.

The dead hand of bureaucracy already rests heavily upon Australian schools. The Parliament should be working to lift it, not to add to its weight.³

Deputy Prime Minister Gillard has refused either in Parliament or in the public arena to confirm that alternative educational philosophies and approaches will continue to be acceptable under the new arrangements, despite many opportunities to do so. When given the opportunity to clarify this matter, she has repeatedly sidestepped the question, instead asserting that application of the curriculum would be mandatory and advising that she would seek the advice of the new Australian Curriculum, Assessment and Reporting Authority (ACARA) – a body yet to be formally established and whose membership will be overwhelmingly appointed by state and territory Labor ministers.

In the same speech in which Minister Gillard said that she would seek ACARA's advice, she went on to say: 'What is not open for negotiation is the idea that a world-

³ John Marsden, *Submission 38*, p. 1.

class curriculum will be an optional extra for schools that are receiving significant public funds.'

The ambiguity in the Government's position presents a major threat to certainty and autonomy in the non-government school sector.

Again, the urgency of this change has not been explained. There is no reason that legislation dealing with a National Curriculum couldn't be separated from this Bill, and introduced in its own bill next year, allowing for appropriate debate to take place once we see the shape of the new curriculum. To pass this section intact now gives a blank cheque to the framers of the curriculum.

Recommendation 2

That section 22 be removed from the Bill. Alternatively section 22 be amended to allow for approved alternative curricula to be offered in schools, such as the IB, University of Cambridge International Examinations, Steiner and Montessori programs.

Reporting of funding sources

Section 24 (1) of the bill reads as follows:

S.24 – Funding agreements – reports on programs and financial operations

- (1) *A funding agreement must require the relevant authority for the non-government school, or other non-government body, to ensure that a report (or reports), of a kind (or kinds) required by the Minister, is given to the Minister in relation to each of the following:*
- (a) *Programs of financial assistance provided under this Act, so far as they relate to the relevant authority;*
 - (b) *The financial operations (**including the financial viability and funding sources**) of:*
 - (i) *in any case – the school or other body; and*
 - (ii) *in the case of an approved school system – the schools (including each particular school) in the system.*

What is meant by "funding sources" is unclear on the face of the legislation. The Independent Schools Council was unable to say what this entailed:

What is meant by funding sources is unclear to us. The discussions that we have been involved in with governments to date have a long way to go in

terms of what is the bottom line and what is the level of disaggregation. We simply cannot know.⁴

The Government however has stated that it intends to ensure that all schools, public and non-government, face identical requirements to make known the full financial details of their operations, including all sources of income and expenditure. Such information might specifically include details of scholarship funds, bequests and other sources of funding such as profit-generating activities, or community fundraising undertaken by Parents' and Friends' Associations.

Non-government schools have stated that they consider this demand to be unfair. It goes much further than simply requiring the acquittal of Commonwealth funds, and has the potential to discourage the private donations of endowments and other gifts, especially when these are provided in kind, by way of services.

There was strong testimony delivered to the public hearings of the inquiry, and in written submissions, as to how the publication of this information is superfluous and potentially divisive.

Coalition senators are suspicious of the Government's motives in making this provision in the bill. The Minister has explained, in very vague terms, that this information is necessary for the purposes of overall planning. The Government says that it needs to know the total amount of funds at a school's disposal so as 'to understand the relationship between resourcing and educational outcomes'.⁵ This explains very little.

Coalition senators fear that the Government seeks information about the resourcing of individual schools for the purposes of returning to a funding model which would provide much reduced funding to schools deemed to be asset rich as a result of strong community and family support over many years.

Nor would this policy affect only long-established schools.

The committee received a submission from Fitzroy Community School in Melbourne which sums up the attitude of many non-government schools:

The school funding bill has a new clause that all schools (except state-run schools) shall have to reveal to the government whatever funds they may receive by way of donations or fundraising, and that these figures may be published. It is hard to see what this information could be used for, except to reduce funding to such schools.

This would have bad effects on society. The community would be less willing to support their schools. This would increase the burden on the

⁴ Mr Bill Daniels, Independent Schools Council of Australia, *Proof Committee Hansard*, 19 November 2008, p. EEWR 4.

⁵ Hon Julia Gillard MP, *Hansard (Reps)*, 21 October 2008, p. 9758.

taxpayer. And it would suppress the natural inclination of families to be involved with their children's needs.⁶

It is clear to Coalition senators that this concern is linked to the threat to the SES model of funding. A number of witnesses appearing before the committee indicated their apprehension about the possibility that the SES model would cease.

While Coalition senators obviously welcome the retention of the SES funding model in the short term, at least, they are concerned about the longer term policy of the Government. We believe there is a strong chance that the views that Minister Gillard and other members of the Government held when in Opposition will eventually prevail, as traditional Labor interests hostile to non-government education win back policy-making influence.

Recommendation 3

That Section 24(1) (b) of the Bill be amended to exclude a requirement for schools to disclose their sources of funding, other than funding from government instrumentalities.

Removal of the New Non-Government Schools Establishment Grants

Testimony given at the public hearing showed that these grants were very helpful to new schools becoming successful.

The previous Government encouraged the viability of the non-government sector and encouraged new schools where a community demand and private sector interest supported such facilities. This encouragement was provided through the New Non-Government Schools Establishment Grants.

The Australian Association of Christian Schools expressed these concerns:

The unexpected removal of this funding provision from the Act is, to say the least, a disappointment and, in the opinion of AACCS, a serious backwards step.

Already, Non Government schools must carry a much greater burden than Government schools in the establishment of a new facility. Legal, structural, capital and marketing costs are at their peak at such a time and enrolments are often at an awkward stage, thereby creating temporary financial pressures.

The Minister has indicated a strong commitment to "schooling" as an expression of her desire to see the funding of Government and Non Government schools on a more even footing. It is difficult to see how the

⁶ Fitzroy Community School, *Submission 21*, p. 2.

removal of the Establishment Grant contributes to a more even playing field.

AACS would propose that the Government revisit the removal of this Grant and ensure that Non Government schools, who must carry the lion's share of the start-up capital for a new school, are not further disadvantaged in comparison to the establishment of new Government schools.⁷

The legislation allowing for the Minister to make these grants was contained in Section 102 of the *Schools Assistance (Learning Together – Achievement Through Choice and Opportunity) Act 2004*. The comparable section (Section 100) in the bill only makes provision for those schools approved in 2008 to receive grants in 2009.

In phasing out these grants (immediately) the Government is making it increasingly difficult to set up new non-government schools. It is hard to understand why newly developing communities and suburbs should not have the same access to government support in establishing new schools that schools in older areas have already enjoyed.

Recommendation 4

That the Government restore grants programmes for new non-government schools of the kind provided for in Section 102 of the *Schools Assistance (Learning Together – Achievement Through Choice and Opportunity) Act 2004*.

Education Legislation Amendment Bill 2008

Coalition senators have no comment to make in relation to this bill, which they note brings much-needed simplification of funding arrangements for Indigenous education. Coalition members of this committee have been active in encouraging this trend during previous inquiries.

Senator Gary Humphries
Deputy Chair

Senator Michaelia Cash

Senator Mary Jo Fisher

⁷ Australian Association of Christian Schools, *Submission 2*, p. 5.