

Submission to Inquiry into Schools Assistance Bill 2008

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Introduction

We welcome the opportunity for public comment on this legislation.

We understand that the purpose of the Schools Assistance Bill is to implement the government's commitment to provide stability in Commonwealth funding for non-government schools for 2009-2012.

We support the Government's stated commitment to transparency and openness in schools funding and have specified a number of ways of strengthening the Bill to achieve this intention in relation to public assistance for non-government schools.

We also understand that the Government has committed to undertake a review of the current SES-based funding arrangements during this quadrennium. We support a review, though it cannot be confined to this particular program, in isolation, as discussed in the conclusion to this submission.

The need for both amendment to this Bill and a further review is created by poorly planned and coordinated changes to the framework governing the planning, operation and funding of government and non-government schools. The provision and funding of schools in Australia now stands at odds with accepted frameworks in most OECD countries and represents a source of ongoing instability and division as well as duplication and waste in resourcing.

In this submission we have set out comments on particular aspects of the Bill, followed by proposals for amendments.

The title of the Bill

In relation to openness and transparency, the first amendment that is needed is to the title of the Bill itself. This Bill does not apply to schools generally, it applies specifically to assistance for only one-third of the nation's schools, namely non-government schools. To retain the current title would be both inaccurate and misleading. The title of the Bill should reflect its purpose accurately and should be *Non-Government Schools Assistance Bill 2008*.

The contents of the legislation

This legislation does not take adequate account of the need to protect the public interest in schooling overall.

It does not provide adequately for protecting the public's interest in its investment in non-government schools; and its effect is to treat the issue of Commonwealth funding for non-government schools as if these schools existed in a vacuum.

Non-government, fee-charging schools are largely unregulated in relation to setting fees and charges; student admission and exclusion criteria; demographic planning for the management of supply and demand of school places overall; financial transparency (beyond accounting properly for the use of their public funding); and conformity with many aspects of anti-discrimination legislation.

These schools operate, in significantly different ways, alongside the public school systems which educate around two-thirds of all Australian students. Public schools are highly regulated in respect of all these matters above and public school authorities are obliged to provide places for allcomers.

In a situation where schooling is compulsory, it can readily be seen that decisions made by private school authorities in the interests of individual non-government schools and systems affect other schools. They affect, for example, the social composition of other schools, and the nature and extent

of competition among schools for students and teachers. These effects are particularly significant for public schools, since they must accept allcomers and bear the brunt of changes in the size and distribution of the school population.

If non-government schools were fully privately funded, or were operated for profit, it would be easier to justify any demands for autonomy, privacy and confidentiality about key aspects of their operation. Even then, such arguments are not strong. Even private, for-profit corporations, for example, are required to meet standards of transparency set out in legislation such as the Corporations Act, including the disclosure of their executive salaries to shareholders.

But non-government schools must be not-for-profit operations to qualify for public funding from the Commonwealth. Members of the public are funding partners or shareholders in their operation. Arguments that rely on 'commercial-in-confidence' provisions are not applicable in these circumstances. It is essential, to protect the public interest in its investment in all schools, that all aspects of the operation of non-government schools be open to public scrutiny, including the scope and source of their private funding.

We note that the key rationale for this Bill is 'stability in Commonwealth funding for non-government schools'. Stability for these schools must not be achieved at the cost of providing adequate resources and stability and predictability of funding for the public schools that educate two-thirds of all Australian children.

Particularly in the context of severe economic downturn, fee-charging non-government schools can be predicted to make changes to their operation to shore up their own viability. Such changes might include adjustments to admissions criteria, including fees, to expand or to contract their enrolments and to place the school to advantage in local competition for students and teachers. The effects of such changes are likely to flow on to public schools, in particular. Due public notice should therefore be required.

Consistent with the reasons set out above, we support the Government's efforts in the current legislation to introduce greater transparency. The current provisions need to be strengthened significantly, however, to

broaden the scope of public reporting so that this obligation more closely reflects the amount of public funding provided.

We have set out below our comments on specific aspects of the Bill and conclude with recommendations for proposed amendments to it.

Enrolment policy and planning

The enrolment policies and admission criteria set by non-government schools govern students' access to the substantial amount of public resources now invested in these schools. These policies and criteria require public scrutiny.

Non-government schools are at liberty to make changes to their enrolment policies in the interests of their own viability and efficiency, in response to changing patterns of demand for places. These changes include, for example, the raising or lowering of fees and the tightening and relaxing of religious, academic, gender or other entry criteria.

Given the potential of these policies and changes to these policies to affect other schools, non-government schools should be required to report their student admission criteria publicly.

The ways in which non-government schools exercise their right to exceptions from anti-discrimination provisions in relation to students, along with their exclusion or expulsion policies affect, in particular, the public schools which must comply with a legal obligation to accept allcomers.

The Government's rationale for maintaining the funding scheme of the previous government is to provide stability for non-government schools for the next funding quadrennium. In the interests of providing stability and predictability for all schools, within and beyond the non-government sector, the Commonwealth should require non-government schools, as a condition of funding, to report publicly, a full school year prior to their planned implementation, any proposals over the period of the quadrennium to change school or system enrolment criteria that have the potential to affect other schools.

The enrolment policies of non-government schools also affect their own geographical drawing areas and, in turn, the level of their funding entitlements under the SES-based funding scheme. The Commonwealth should report publicly the information which it collects for funding purposes on the distribution of students in these schools among census collector districts.

Curriculum and teaching standards

The Commonwealth Government must collect the information necessary to assure the general public that its required curriculum and teaching standards are being met in the non-government schools in which it is investing public funds. This is necessary to protect the educational interests of the students in these schools and the interests of the wider public in maintaining educational standards and outcomes.

While all non-government schools are permitted to operate outside various provisions of anti-discrimination legislation, not all choose to exercise this exception. A recent job advertisement from Sydney Grammar School, for example, included the statement that this school was ‘an equal opportunity employer’. Those non-government school authorities which do make use of exceptions from anti-discrimination provisions in the employment of teachers should be required to report publicly on the specific ways in which they do so. Parents enrolling their children in a school and the public which contributes to the cost of their staffing are entitled to know whether or not merit principles apply in employment of teachers. If school authorities are not required to be explicit and public about their use of exceptions from anti-discrimination legislation in employing teachers, there is a risk of these exceptions being applied in an inconsistent, arbitrary or covert way at the time of, or after, the employment of teachers. In many cases, fee-charging non-government schools are in receipt of public funds from both Commonwealth and State governments which, when combined, more than cover the cost of their teaching staff. This confers an obligation for public reporting on recruitment and employment practices.

Financial provisions of the legislation

One of the key provisions in the Bill is the requirement that school authorities report on each school's financial operations, including financial viability and funding sources. This provision is set out in Section 24 of the current Bill.

The requirement in Section 24, however, is limited to reporting to the Minister and contains little that is new. The Commonwealth has in fact required non-government schools to complete an audited financial questionnaire on its financial sources, operations and viability since 1974¹.

What is now needed is for this legislation to be amended to require the information on financial operations to be available publicly. Apart from the increased information that would be available for parents and the broader community, public reporting on the financial and other resources of these schools would assist all schools and systems to plan and improve their own programs for their students and communities.

Even parents of children enrolled in non-government schools are not necessarily aware of how these schools are funded or, in particular, of the level of public assistance these schools receive from both levels of government, Commonwealth and State/Territory.

To protect the public interest in its investment in these schools and consistent with the Government's intention of greater transparency, the Commonwealth should introduce requirements for financial transparency for non-government schools of the kind that apply to for-profit businesses under the Corporations Act.

Put simply, the public has a right to know who its private funding partners are in these non-government schools; the extent of the total resources available to the school or system; and all information necessary to make clear any risks to the financial viability of the school or system.

Especially given that schools are in competition with each other for leaders and teachers, schools in receipt of Commonwealth funding should be required to report publicly on remuneration for executives and teachers.

¹ See, for example, *Commonwealth Programs for Schools – 2008 update*, pages 45-6.

In sum, we propose that the provision set out in Section 24 of the current Bill - requiring that school authorities report on each school's financial operations, including financial viability and funding sources - be moved to Section 21: *Funding agreements – publication by schools of information relating to schools*. As currently drafted, Section 21 leaves the specification of publicly-available information to Ministerial discretion through future regulations. Although there is a case for some Ministerial discretion, subject to regulations, the legislation itself should specify some of the more fundamental elements of transparency in relation to financial reporting as well as in relation to other matters we have identified above.

Other aspects of the operation of non-government schools that should be subject to public reporting requirements should include:

- Enrolment policies, admission criteria and procedures, including prior notice of any changes
- Public notification of any proposed changes to a school's operation
- Information on the distribution of students in these schools among census collector districts
- Public notification of any use by the school of statutory exceptions from provisions of anti-discrimination provisions in relation to student enrolments and employment of staff
- Public notification of the school's financial operations, including:
 - Sources of funding: Commonwealth and State/Territory governments; fees and charges; other income; donations, bequests; investments;
 - Information on the school's financial position consistent with requirements under the Corporations Act
 - Salary packages for the school's executive staff and payments to teaching and other staff.

Consistent with the points set out above, we propose the following amendments to the Schools Assistance Bill.

Proposed amendments to the Bill

1. The title of the Bill should be amended to *Non-Government Schools Assistance Bill 2008*.
2. The re-writing of Section 21 along the following lines:

21 *Funding agreements – publication by schools of information relating to schools*

(1) A funding agreement for a non-systemic school, or an approved schools system, must require the relevant authority for the school or system to ensure that the schools, or each school in the system, makes the information specified in subsection (2) below relating to the school for a program year publicly available within 6 months after the end of the program year. (as in current Bill)

(2) The information specified in subsection (1) for publication by schools must include the following:

(a) enrolment policies and all criteria for enrolment in the school, including prior notification of at least one full school year of changes to those policies and criteria

(b) Information on the distribution of students in these schools among census collector districts as provided to the Commonwealth for funding purposes;

(c) prior notification of at least one full school year of changes to a school's operation, including but not limited to the following: moving from single-sex to co-educational schooling and vice-versa; extending from pre-school to primary, junior secondary and senior secondary and vice-versa; introduction of significant new curriculum offerings, including vocational education, training and apprenticeship courses and higher education transition programs; establishment of

new campuses; amalgamation with other schools; and other changes specified by the regulations.

(d) Public notification of any use by the school of statutory exemptions from the provisions of Commonwealth and State/Territory anti-discrimination legislation; this information also to be included in the school's or system's employment advertisements and other recruitment processes.

(e) Public reports on programs and financial operations including:

(i) programs of financial assistance provided under this Act, so far as they relate to the relevant authority

(ii) the financial operations (including the financial viability, financial position and all funding sources), in a way that is consistent with the Corporations Act (full title here), of:

a. in any case – the school or other body; and

b. in the case of an approved school system – the schools (including each particular school) in the system.

(e) Any other information that may be specified in regulations.

3. Delete Section 24 of the current Bill.

Conclusion

There is a clear need for the review the Government has promised of its own arrangements for Commonwealth general recurrent funding to non-government schools, which are set out in this legislation. Even if the values that underpinned the SES-based scheme introduced by the Howard Government in 2001 were universally agreed, the policy has been so poorly implemented that it now lacks integrity, fairness and transparency. The flaws and anomalies in this scheme have been widely and well documented². By 2007, the funding provisions of this scheme had been applied to only around half of all non-government schools. The remaining half were being funded at the level of their entitlement under the previous Labor scheme, where grants were based on an assessment of schools' private resources.

One effect of this legislation will be to continue to deliver public resources to some non-government schools that have resources, even from their private sources alone, that are well beyond those considered by governments to be adequate for most other schools in Australia. By any national or international standards, the resources of these schools and the high fees they charge are in excess of those needed to provide a high quality education to their students. The rationale of 'stability' is not a justification for contributing to, let alone increasing, their resources. The public resources directed to such schools through this legislation would be better directed to the achievement of the Government's own stated priorities in education under the rubric of its 'education revolution'. In particular, it would be better directed to measures designed to raise the stability and quality of teaching in those public schools serving students with high educational needs.

The review foreshadowed by the Commonwealth is necessary to restore integrity to funding assistance for non-government schools, but it cannot be conducted in isolation from broader structural problems in schools funding and, in particular, to the asymmetrical and dysfunctional split that has developed between the Commonwealth and States/Territories in relation to their funding of public and non-government schools³. This split has toxic

² Dowling, A. 2007. *Australia's Schools Funding System*, ACER Policy Brief; Bonnor, C & Caro, J. 2007. *The Stupid Country: How Australia is Dismantling Public Education*; Department of Education, Science and Training, 2006. *Review of SES Funding Arrangements for Non-government Schools*; Cobbold, T. 2008. *An Analysis of Over-funding of Private Schools under the SES Model. National Overview*.

³ Connors, L. 2007. *Making Federalism Work for Schools*.

effects on schools funding, especially in the context of the problem of vertical fiscal imbalance in Australia's federal system.

This Inquiry relates to funding assistance for non-government schools only. There appears to be no similar opportunity provided by the Government currently for the issue of funding for Australia's public schools to be debated in the national Parliament. Whether or not funding is to be provided by the Commonwealth to public schools through alternative mechanisms such as Commonwealth-State funding partnerships, this should not preclude the opportunity for debate in the national Parliament.

What is needed is a thorough, public and open, independent, review of schools funding arrangements for Australia. It should deal with the need for transparent school resource standards, with a view to achieving a rational alignment between the resources available in schools and the outcomes expected of them.

There is, after all, little purpose in governments' setting curriculum standards without a guarantee that all schools have the necessary resources to meet them. The key resource schools need is an adequate supply of appropriately qualified teachers to implement the agreed curriculum in all schools for the diverse student populations they serve.

There is a need for realistic schools funding arrangements that reflect the fact that schooling is compulsory. Schools provide an essential service, and in such circumstances, governments inevitably wear the risk of market failure, State governments in particular. There is a need for public arrangements for the planning, operation and funding of schools that protect the interests of all schools and students and the total public investment in them.

A much-needed review of schools funding arrangements in Australia should be based in the principle that the primary obligation of governments is to the maintenance and advancement of a strong and socially representative public school system that provides the highest standards of schooling for all.