

Submission to the Queensland Parliament Education, Tourism, Innovation and Small Business Committee



Introduction

Community confidence in the independent schooling sector remains strong with about 120,000 students enrolled in 202 independent schools across Queensland in 2017. These schools educate approximately 15 percent of the state's total school-age population and about 20 percent of all secondary students.

The strength of Queensland's independent schooling sector lies in the rich mix of education choices and opportunities local schools provide families. Independent schools are as diverse as the students and parents who make up their close-knit communities. Of Queensland's 202 independent schools: 183 educate children with disability; 109 cater for students for whom English is a second language or dialect; 184 enrol Indigenous students; 72 offer international education programs; 33 provide boarding services; and 17 cater specifically for students who have disengaged from mainstream education.

Common to all independent schools is their commitment to strong student outcomes, high standards of behaviour, and the welfare and well-being of students.

Over the past 10 years enrolments at Queensland independent schools have increased by 21 percent. This growth is a clear indication that parents value an independent education and are prepared to invest their after-tax incomes in their child's schooling.

Independent Schools Queensland (ISQ) welcomes the opportunity to provide a submission in relation to the Education (Accreditation of Non-State Schools) Bill 2017 (the Bill) which will replace the current *Education (Accreditation of Non-State Schools) Act 2001* (the Act).

The Act is the principle legislative instrument which enables non-state schools to be accredited to operate in Queensland and to receive Government funding support. It provides the regulatory mechanism through which accredited non-state schools are reviewed in terms of their continuing compliance with the accreditation criteria.

The current Act has been in place since 2002 with few amendments. Its review, commenced under the previous State Government, was timely and supported by ISQ.

Because of the review, which was continued under the current State Government, the Bill to replace the Act is currently before the Queensland Parliament for consideration.

ISQ supports the passage of the Bill with an implementation date of 1 January 2018.

The modernisation and streamlining of the current Act is appropriate and the resulting reduction of red tape for non-state schools is welcomed.

As outlined in the Explanatory Notes, ISQ was consulted on the draft Bill. ISQ expresses its appreciation to Departmental officers for their consideration of several matters raised by ISQ in the drafting of the Bill.

The following specific comments in relation to various aspects of the legislation are provided to assist the Committee in its consideration of the Bill.

Accreditation of Non-State Schools

The current system of accreditation of non-state schools in Queensland, which has been in place since 2002, has served the community well. It establishes several accreditation criteria which all non-state schools must meet to be accredited. Once accredited, non-state schools must demonstrate on a regular basis that they continue to meet the criteria.

This system of accreditation will largely remain in place under the provisions of the Bill, albeit with some changes designed to streamline processes and reduce red tape.

The Bill establishes the Non-State Schools Accreditation Board (NSSAB) which is responsible for the oversight of the accreditation system, as is the case under the current Act. ISQ supports the continuation of NSSAB including its membership which appropriately consists of nominees of the non-state schooling sectors and other appropriately qualified members appointed by the Minister following consultation with ISQ and the Queensland Catholic Education Commission.

The Bill provides appropriate powers to NSSAB through the provision of compliance and show cause notices, and cancellation provisions to address circumstances where non-state schools may not be complying with the accreditation criteria.

Objects of the Act

Section 3 of the Bill prescribes the objects of the Act:

- To uphold the standards of education at non-State schools; and
- To maintain public confidence in the operation of non-State schools; and
- To foster educational choices in the State.

ISQ supports these objects and is of the opinion that the Bill provides the necessary powers and functions for these objects to be achieved.

For non-state schools, it should be recognised that parents (who pay fees from after-tax income) and communities are the major driver of standards and high level outcomes. Given the extensive public availability of information on schools and their education outcomes that is available today, this driver has become more important than ever.

Despite this, it is acknowledged that the Queensland Government has an important role in the regulation of non-state schools in the interests of ensuring every child is entitled to a high standard of education and parents can exercise choice in schooling.

This State Government role should be appropriately balanced in relation to the autonomy of independent schools and their accountability to their supporting parents and communities.

It is also acknowledged that independent schools receiving Government financial assistance must be accountable for such funding from the taxpayer.

ISQ believes that the Bill provides the appropriate mechanisms and requirements for independent schools to meet such accountability requirements.

Support for Proposed Changes

ISQ supports the following changes resulting from the Bill given the resulting reduction in red tape and elimination of unnecessary administrative requirements:

- Dispensing with the issue of certificates of accreditation;
- Streamlined processes for the amalgamation and separation of schools;
- Notification of a student intake day for each year level rather than for a sector of schooling in the establishment phase;
- Redefining Assessor and Auditor to be Authorised Persons;
- The investigating offence of operating a school without accreditation;
- Provisions relating to the reporting on funding expenditure; and
- The removal of provisional accreditation provisions (noting that this will require schools to fully meet the accreditation criteria from their day of commencement).

ISQ strongly supports the removal of a separate and distinct process to determine that a non-state school is eligible for funding and has long advocated for such a change. A school, once accredited, will be eligible for funding provided it meets a not-for-profit test. This change not only reduces red tape but importantly confirms the right of every student in a not-for-profit accredited school to receive Government support for their education. The current funding eligibility processes are a barrier to entry for new or expanding schools and curtail genuine choice in education (which is an object of the Act).

The subsequent changes to the provisions for eligibility for Government funding including there being no public notification process, and the removal of the two-year limitation on re-applying for funding eligibility, are also supported.

Matters for Consideration by the Committee

ISQ suggests that the Committee consider the following matters.

Section 7 - Meaning of operated for profit

The Bill amends the current definition of operated for profit to the following:

“A school is **operated for profit** if any part of the income arising from the school’s operation is used for any purpose other than the operation of the school.”

This proposed definition is more restrictive than the definition currently contained in the Act which requires a school to entirely use any profits made from the school’s operation to advance the school’s philosophy and aims.

Whilst the intent of the amended definition is understood and supported, there may be unintended consequences resulting from its more prescriptive nature.

The proposed definition is in contradiction to the definition in the *Charities Act 2013* (Cth) and the *Australian Charities and Not-for-Profit Commission Act 2012* (Cth) under which a school must be registered as a charity to qualify for Australian Government funding.

Under the Australian Charities and Not-for-profits Commission Act 2012 and under the *Charities Act 2013*, schools as charities are required to ensure that their purpose is a “charitable purpose, or purposes that are incidental or ancillary to, and in the furtherance, or in aid of, the purposes of the entity” (Section 5). Charitable purpose includes “advancing education” as well as “advancing social or public welfare which specifically includes the provision of child care services” among the definition list of charitable purposes (*Charities Act 2013* s12).

The Committee should consider recommending that the Section 7 definition be amended to be in line with the *Charities Act* in defining a school which is operating for profit as one which does not act within its charitable purpose or for purposes that are ancillary or incidental and in the furtherance, or in the aid of, the purposes of the entity.

Alternatively, the Committee might give consideration including reference to the school’s philosophy and aims in Section 7. In this regard, it is noted that the Explanatory Notes to the Bill states that the Board may consider the school’s statement of philosophy and aims to assist to determine the scope of the school’s operations.

A further refinement may be to particularly reference in the Section that any Government funding received by a school must be used for the school’s operations. This would be strongly supported on the basis that it is questionable that Government has a right or responsibility to legislate by very narrow prescription how a non-government entity can use its private funds.

To maintain the currently proposed definition in the Bill may have significant unintended consequences where, for example, a school operating a child care centre (which is within its charitable purpose) could be deemed to be “operated for a profit” with the operations of the child care centre not deemed to be “the operation of the school”.

Other potential areas of unintended consequences include activities such as breakfast clubs and other health and welfare services which schools often provide to disadvantaged students; school fundraising for a non-associated charity; schools collecting funds as an agency for private tuition conducted at the school; outreach projects to support other schools in their local community, in remote areas or overseas; schools providing start up assistance or specific support by way of loan to rural or remote schools from accumulated reserves of parent contributions.

Each of the above specified areas of potential unintended consequences fall within the *Charities Act* definition for schools to operate as a charity and therefore access Australian Government funding. It would be unacceptable that the State Government might deem a school to be operating for a profit while the Australian Government does not.

Section 8 - Meaning of a prohibited arrangement

The Bill’s definition of prohibited arrangement in Section 8(1)(a) refers to a contract or arrangement entered into by a “proposed governing body”. To be registered as an entity, an organisation must have a governing body so it is recommended that the term “or proposed governing body” be removed from Section 8(1)(a).

In Section 8(2)(b), it is defined that a contract will not be for the benefit of the school if the property, goods or services are “not required for the operations of the school”. As with the proposed Section 7, the term “operation of the school” is used and this is neither defined nor referenced such as recommended above to the *Charities Act* definition of the purpose being a “charitable purpose, or purposes that are incidental or ancillary to, and in the furtherance, or in aid of, the purposes of the entity”.

There is concern as to how limited “operations of the school” may be defined in the application of this Bill and, as indicated above, there is potential for significant unintended consequences.

The Bill also extends the meaning of a prohibited arrangement to all entities rather than its current meaning in the Act where it applies only to for-profit entities.

While it is accepted that contracts or arrangements entered into by a school’s governing body should be at arm’s length without reference to the profit status of the relevant entity, ISQ has some concerns about the potential unintended consequences of the extension of the definition.

Most independent schools are associated with another entity. Most commonly this relates to a religious organisation or church. These bodies would normally be not-for-profit. In addition, many independent schools have associated entities such as Foundations, Parent Associations, and sometimes, service entities (such as transport providers, building and maintenance). These associated entities will also normally be not-for-profit and will have been established to support or benefit the school.

The extension of the meaning of prohibitive arrangements will capture arrangements with associated not-for-profit entities of a school with the resulting “arm’s length” test to apply. This is unlikely to be the intent of the proposed prohibitive arrangements provision.

The Committee might consider a clearer definition of prohibitive arrangements. For example, it might only apply to financial transactions.

Section 10 - Meaning of meets the government funding eligibility criteria

Section 10(c) of the Bill refers to “the governing body is not a party to, and **does not intend to enter into**, a prohibited arrangement in relation to the operation of the school”.

Any assessment of an “intention” of a school by definition would be highly subjective. To deem an “intended” arrangement as prohibitive and therefore deem that a school does not meet the government funding eligibility criteria on the basis of a subjective judgment would be problematic.

Consideration might be given to the phrase “does not intend to enter into” being deleted from this section.

Notification of Changes to Governing Body

The Bill will require non-state school governing bodies to notify NSSAB within 28 days of a change in persons on the governing body, including persons ceasing to be a governing body member.

Whilst appreciating that a key accreditation criteria is the suitability of the governing body (and the requirement that members of a governing body have current Blue Cards), ISQ considers this requirement too excessive in terms of achievement of the objects of the Act.

The details of the members of a governing body are already available through the ACNC or ASIC registers (and schools must already notify any changes in governing body members to these regulators).

Currently, NSSAB undertakes an update of non-state school governing body members twice per year. It would be the preference of ISQ that such a system is maintained as opposed to the administrative burdensome update each time a governing body member changes.

ISQ estimates there are approximately 2,000 governing body members of independent schools. A turnover of governing body members of just 10% would produce some 400 notifications to NSSAB annually, requiring a significant administrative effort to process and update records on a continuous basis. ISQ is not convinced that the required administrative effort will result in any better outcomes in terms of the objects of the Act.

Appeals and Reviews

Under the Bill, the only recourse a school (or potential school) would have to a review or change to a range of decisions in relation to accreditation and eligibility for funding is to the Queensland Civil and Administrative Appeals Tribunal (QCAT).

Under the current Act, appeals are made to the Minister for Education. In relation to eligibility for government funding, this is currently inappropriate given that it is the Minister who makes the decision about eligibility. However, this is resolved under the Bill as eligibility for funding decisions are made by the Non-State Schools Accreditation Board (NSSAB).

Appeals to QCAT may impose a significant cost (both time and monetary) both for “to be established” and established schools to prepare and present their case to a formal administrative tribunal and would place cases in a legally formal process.

Consideration should be given for appeals to be made in the first instance to the Minister for Education. It is the Minister who is responsible for the Act and for schools. Without such a provision, the Minister for Education has no decision-making responsibility for the accreditation of non-state schools.

A process of appeal or review by QCAT would be appropriate after the Minister for Education has dealt with an issue after appeal or review.

Conclusion

ISQ supports the passage of the Education (Accreditation of Non-State Schools) Bill 2017 which replaces the *Education (Accreditation of Non-State Schools) Act 2001* with more modern and streamlined accreditation processes, including for Government funding eligibility.

ISQ has raised several specific issues which the Committee may wish to consider in terms of further clarification or improvement to the provisions of the Bill.

ISQ would be happy to provide further information on these matters or discuss the issues with the Committee.

**Independent Schools Queensland
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