

SUBMISSION TO THE PRODUCTIVITY COMMISSION

REVIEW OF NATIONAL COMPETITION POLICY ARRANGEMENTS

The Independent Schools Council of Australia (ISCA) is the peak national body covering the independent school sector. It comprises the State and Territory Associations of Independent Schools. Through these Associations it represents a sector with over 1,000 schools and almost 443,000 students accounting for some 12 per cent of Australian school enrolments.¹

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. Independent schools include:

- *Schools affiliated with larger and smaller Christian denominations, for example, Anglican, Catholic, Lutheran, Uniting Church and Presbyterian schools*
- *Non-denominational Christian schools*
- *Islamic schools*
- *Jewish schools*
- *Montessori schools*
- *Rudolf Steiner schools*
- *Schools constituted under specific Acts of Parliament, such as Grammar schools in some states*
- *Community schools*
- *Indigenous community schools*
- *Schools that specialise in meeting the needs of students with disabilities.*

Independent schools are not-for-profit institutions founded by religious or other groups in the community and are registered with the relevant state or territory education authority. Most independent schools are set up and governed independently on an individual school basis. However, some independent schools with common aims and educational philosophies are governed and administered as systems, for example the Lutheran system. Systemic schools account for nearly 20 per cent of schools in the independent sector.

¹ This data is inclusive of Catholic independent schools.

Background

1. On 23 April 2004 the Government asked the Productivity Commission to:
 - Report on the impact of National Competition Policy and related reforms undertaken to date on the Australian economy and community; and
 - Identify areas offering opportunities for significant gains to the Australian economy from removing impediments to efficiency and enhancing competition.
2. In conducting the review the Commission was asked to take into account the desire of the Government ‘to focus new review and reform activity ... in particular where clear gains are possible in Australia’s international competitiveness [and] in the efficiency of domestic markets or for Australian consumers’.
3. The Productivity Commission Chairman, Gary Banks, together with Commissioners Robert Fitzgerald and Philip Weickhardt, met the Executive Director of the Independent Schools Council of Australia (ISCA) on 4 May 2004, and invited ISCA to prepare a submission to the review.

Scope of submission

4. ISCA submits that the two distinct roles that State and Territory governments play in school education, as the owners and operators of public education systems on the one hand and as funding providers and regulators of growth for non-government schools on the other hand, constitute a fundamental and irreconcilable conflict of interest. These arrangements impact on the efficiency of the domestic market for school education and reduce the capacity for Australian consumers (parents) to exercise choice in schooling for their children.
5. The submission covers two significant areas where the scope for genuine choice is adversely affected – policies on new non-government schools and support for students with disabilities.

New schools policies

6. The eligibility of new non-government schools for Commonwealth Government general recurrent funding was determined prior to 1985 on the simple criteria that a school should be legally not for profit; should be registered by the relevant state or territory authority; and agrees to meet the Commonwealth’s accountability conditions.
7. From 1986 proposals for new non-government schools and proposed changes in operations by existing schools came under the terms of the Commonwealth government’s New Schools Policy. Decisions on eligibility for Commonwealth general recurrent funding were based on assessments made by state level Joint Planning and Coordinating Committees or New Schools Committees. Proposals were assessed in terms of the demographic characteristics of the catchment area in which the proposed school was to be located, and whether proposals were consistent with planned educational provision for that area. This included the planned development of both the government and non-government school sectors and the maintenance of standards in existing schools potentially affected by new schools.
8. In 1996 the Australian Government abolished the New Schools Policy and introduced eligibility criteria similar to those applying prior to 1985. Since the abolition of the

Australian Government's new schools policy, the assessment of proposals to establish new non-government schools and the determination of their eligibility for State and Commonwealth funding has become the responsibility of state and territory registration authorities.

State and territory registration requirements for non-government schools

9. All states and territories have planning and approval policies in place relating to proposals for new or expanded non-government schools, and these vary considerably. Generally the policies and guidelines are for use by planning committees, and allow some flexibility in how the guidelines are interpreted in assessing individual applications. However, in some states (eg Queensland), the planning and approval processes are legislated and therefore there is no flexibility in interpretation.
10. In all states and territories procedures are in place to examine and assess the potential impact of a proposal for a new or changing non-government school on existing government and non-government schools within the same catchment area. This assessment process is a key factor in determining the eligibility of the proposed school for state government funding. As an example, in South Australia the provision of state government funding to support the operation of a new or significantly changed non-government school is subject to a decision by the Minister following advice from the planning committee. The planning committee must be convinced that the proposed school development "is unlikely in the five years following its commencement to lead to a negative educational impact... on any existing or approved government or non-government school".

State and territory government funding for independent schools

11. Overall state and territory governments provide around 30% of total government recurrent funding for independent schools. Policies vary across the states and territories in terms of the total level of funding provided and the basis for allocating funding to individual schools.
12. Prior to 2001 Commonwealth general recurrent grants to non-government schools were determined on the basis of the Education Resources Index, or ERI. A number of states and territories relied on this funding methodology as the basis for their own funding policies for non-government schools. Since 2001 Commonwealth general recurrent grants to non-government schools have been based on the Socio-Economic Status (SES) funding scheme.
13. A number of states and territories which relied on the former ERI have changed their funding mechanisms and some have placed a greater emphasis on allocation according to need, possibly seeking to offset the impact of the Commonwealth reforms. Considerable uncertainty now surrounds future funding arrangements for non-government schools in the majority of states and territories and a number of policy changes which impact on some schools have already been announced or are pending.

Implications for state and territory governments of their dual role

14. State and territory governments have a dual role in relation to the provision of school education in Australia. In relation to government schools, State and territory governments are responsible for the delivery of education in the eight Australian public school systems. State and territory governments own the state schools, manage them and provide about

88% of their public funding. In relation to non-government schools, State and territory governments are responsible for determining whether proposals to establish or expand a non-government school will be approved, and for deciding on the level of funding and other resources which will be provided to the school.

15. The dual responsibilities of state and territory governments in relation to provision for government and non-government school education has in ISCA's view led to a significant conflict of interest in state and territory government dealings with non-government schools. The conflict of interest is apparent in two particular areas:

Regulation of growth

16. The abolition of the Commonwealth's New Schools Policy in 1996 has led to a significant change in the regulatory environment for growth and expansion in the non-government sector. A consequence, no doubt unintended, of the policy change is that the State and Territory governments which are the providers of government school education are now also the sole regulators of growth in the non-government sector.
17. Representatives from the independent sector who have been closely involved in the planning processes have observed that state education representatives tend to see the role of the planning committee as regulating the independent sector to minimise the flow of students from government schools, and may interpret the guidelines accordingly.

Resourcing

18. State and territory governments determine both the quantum of funding to be provided to the non-government school sector, and the eligibility and level of funding of individual non-government schools. State and territory governments as the owners and operators of the public systems of education are essentially in competition with the non-government sector as alternative providers of school education. The additional role of state and territory governments in relation to the non-government school sector as the source and regulator of substantial levels of supplementary funding constitutes a conflict of interest.
19. It should be noted that while the amount of funding provided to the non-government school sector varies considerably among the states and territories (ranging from 12.3 per cent to 27 per cent of the average cost per government school student), the contribution is of considerable significance to individual non-government schools, and in many cases is crucial to their overall financial viability.

Students with disabilities

20. The obligations on all schools in Australia to enrol students with disabilities are determined under the Commonwealth *Disabilities Discrimination Act 1992*. This legislation makes it unlawful for schools to discriminate against a person on the grounds of disability, except in those circumstances where the enrolment of a student with disabilities would impose an unjustifiable hardship on the school. ISCA is concerned that while the *Disability Discrimination Act 1992* has introduced a rights based model for students with disabilities, current government funding and support arrangements inhibits its implementation.
21. Generally students with disabilities in independent schools receive significantly less government funding for their educational support needs than if they were educated in a government school. In some instances this differential is very substantial, with students receiving less than 20 per cent of the funding that they would receive in a government

school for their education support needs. The differential is generally greatest for students with high education support needs. This funding differential combined with the high cost of meeting the specific educational support needs of students with disabilities, has a number of implications:

- It limits the capacity of independent schools to provide adequate resources for students with disabilities.
 - Individual school communities are required to fund the shortfall if they are to provide adequately for the educational needs of students with disabilities. In some cases of high need the shortfall is very large, placing an unjustifiable strain on school communities and diverting resources from general educational provision.
 - Where a number of students with disabilities are enrolled in a particular school the school community has to find significantly more resources with inadequate help from governments.
 - Concerns about the limited capacity of independent schools to provide additional support, particularly relative to a government school, are likely to have acted to limit effective parental choice in schooling for students with disabilities.
 - As a result of the funding differential more students with disabilities are likely to be enrolled in the better-funded government schools, and this may contribute to a lower level of enrolments of students with disabilities in independent compared to government schools.
22. These arrangements clearly limit the scope for choice of school to parents (consumers). If governments were to provide similar support and resources for all students with disabilities, irrespective of choice of provider, there would be enhanced choice and compliance with the intentions of the legislation.

Conclusion

23. The two distinct roles that State and Territory governments play in school education, as the owners and operators of public education systems on the one hand and as funding providers and regulators of growth for non-government schools on the other hand, constitute a fundamental and irreconcilable conflict of interest. These arrangements impact on the efficiency of the domestic market for school education and reduce the capacity for Australian consumers (parents) to exercise choice in schooling for their children. This limits the expansion of the non-government school sector which limits choice for parents. It also reduces the options for particular groups of students - students with disabilities provide an example of the negative impact of these arrangements.

Independent Schools Council of Australia
Canberra

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