

**Association of Independent
Schools of Victoria Incorporated**

**Submission to
The Productivity Commission
on the
Contribution of the
Not for Profit Sector**

29 May 2009



ABOUT THE ASSOCIATION

The Association of Independent Schools of Victoria was established in 1949 to represent, promote the interest 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 215 independent schools, educating more than 120 000 students.

As Member Schools are individual legal entities, the Association is not a system authority but a not-for-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 improvements and developments in the education sector. 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.

REASONS FOR SUBMISSION

This submission to the Productivity Commission Study *Contribution of the Not for Profit Sector* is driven by the Association's desire to provide input into a review of, and possible recommendation for changes to, regulatory and reporting mechanisms affecting Member Schools of the Association.

As educational institutions, independent schools operate within the regulatory regimes governing not-for-profit entities, deductible gift recipient (DGR) funds and as registered schools in receipt of government funding.

The educational services provided by the Association's Member Schools are highly valued in the community. As a result, independent schools often attract financial support from parents and the general community which either might not be subject to tax as income for the school, or may constitute a deductible gift.

As a consequence of being in receipt of government funds, independent schools are required to submit detailed financial and operational information to both the Victorian Registration and Qualifications Authority (VRQA), the state-based school registration body, and the Department of Education, Employment and Workplace Relations (DEEWR), as 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 acts which are charitable or derive a 'public good'. The Association's Member Schools contribute time, expertise and resources into their local communities. In addition to making active connections within these communities, the activities undertaken by independent schools encourage a culture of giving, while broadening students' understanding of community needs through the development of purpose and participation.

Schools may also have associated entities which have 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.

THE SUBMISSION

TERMS OF REFERENCE

The terms of reference for the commissioned study have been published as follows:

- assess the extent to which the not-for-profit sector's contributions to Australian society are currently measured, the utility of such measurements and the possible uses of such measurements in helping shape government policy and programs
- consider alternatives for, or improvements in, such measurements, or further quantitative and/or qualitative means of capturing the not-for-profit sector's full contribution to society
- identify unnecessary burdens or impediments to the efficient and effective operation of community organisations generally, including unnecessary or ineffective regulatory requirements and governance arrangements, while having regard to the need to maintain transparency and accountability
- consider options for improving the efficient and effective delivery of government-funded services by community organisations, including improved funding, contractual and reporting arrangements with government, while having regard to the need for transparency and accountability
- examine the changing nature of relationships between government, business and community organisations in recent times, their general impacts, and opportunities to enhance such relationships to optimise outcomes by the sector and its contribution to society
- examine the extent to which tax deductibility influences both decisions to donate and the overall pool of philanthropic funds
- examine the extent to which tax exemptions accessed by the commercial operations of not-for-profit organisations may affect the competitive neutrality of the market.

RESPONSE

STRUCTURE OF THE SUBMISSION

This submission is divided into the following sections:

1. Transparency and Accountability
2. Government Funding
3. Reporting Requirements
4. Deductible Gift Recipient Funds
5. 'Public Good' and its application in the policy environment
6. Costs of Regulations
7. Conclusions

1. 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. Their future viability depends on their ability to attract students and maintain their enrolment levels in the competitive environment of the education sector.

The operations and performance of independent schools must justify the continued 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 often exceed any current regulatory requirement. This frequently involves the publication of detailed annual reports and reporting to parents.

2. Government Funding

As a condition of their receipt of government funding, independent 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 a result of receiving government funding include, but are not limited to:

- a financial questionnaire
- student addresses for calculation of the school's socioeconomic status (SES) score
- school census data
- attendance reports
- compliance with national school principles
- satisfaction surveys
- annual reports

Amongst the extensive reporting and compliance requirements, the 'Financial Questionnaire' 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 may dedicate significant time 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 education outcomes for students.

In relation to funding received from the Victorian Government, independent 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
- commitment to the Victorian Government's educational goals and targets
- demonstration that they meet the conditions for initial and ongoing registration as a school

Independent schools may also be required to report against any or all these accountabilities at any time if requested by the Victorian Government.

The level of detail required to be submitted by independent schools is fundamentally inequitable. Ultimately affects the neutrality of the competitive environment of the entire government and non-government sector. In contrast to independent schools, government schools are not required to meet the same stringent reporting requirements even though they account for 69 per cent of the schools operating in Victoria.

Further, data compiled¹ from the Australian Government's *Report on Government Services 2009* indicates that non-government schools in Victoria receive less than half the amount of state and federal funding as government schools, all the while saving the Australian taxpayer approximately \$1.451 billion per annum in education costs.

3. Reporting Requirements

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 fulfilment 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-operated and owned schools, systemic schools and wholly autonomous schools.

The majority of 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.

¹ ROGS 2009 Tables 4A.6, 4A.8, 4A.9

Independent schools constituted as incorporated associations in Victoria are required to submit financial reports to Consumer Affairs Victoria, within one month of a school's Annual General Meeting

Schools operating in this way are also 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.

4. Deductible Gift Recipient Funds

Independent schools do not enjoy the benefits of high levels of government 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.

Private investment in independent schools brings benefits to local communities:

- scholarship funds which allow:
 - academically or musically gifted students, or
 - students from disadvantaged backgrounds,access to an educational environment that can enhance these skills and interests, at little or no cost to parents who might not have been able to meet the costs themselves.
- building funds ultimately lead to school infrastructure investment and/or improvements that provide facilities that can in turn be used by local communities. These include gymnasiums, sporting ovals, multipurpose halls, etc.

DGR fund endowments allow independent schools the opportunity to provide a 'public good' through private resources and amenities.

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 the school's published financial accounts.

Additionally, schools have strong incentives to provide 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.

5. 'Public Good' and its application in the policy environment

If members of the public are able to benefit from private investment in private institutions, either through DGR funded resources or from direct investment by the institution, then independent schools are contributing a 'public good', even though the

benefit enjoyed by the public does not necessarily correspond with the educational aims of a school.

The Association has closely monitored the changes that have been undertaken in the United Kingdom, and the associated requirements that have been generated for charities under the *Charities Bill 2006*. Schools in the United Kingdom are regarded as charities in nature, and receive tax benefits as charitable institutions. They are required under law to meet 'public benefit' requirements for registration.

Under United Kingdom law, a 'public benefit' must be an identifiable benefit or benefits derived from a charity carrying out its aims. In the case of schools, 'public benefit' requirements can only be met through any outcomes that directly relate to education, for example, bursaries, scholarships, use by other (government) schools of school resources, etc. Should schools undertake activities that may generate a 'public benefit' outside the definitions of its educational scope, these benefits do not count in any assessment of the contribution these schools have made to their local communities and beyond.

Following some consultation with its Member Schools, the Association regards the approach taken by the Charities Commission in the United Kingdom to be too narrow in its focus, and potentially detrimental to schools serving local communities in a capacity beyond bounds of their educational aims, should these be adopted in Australia.

Independent schools will be justifiably cautious regarding the definition of 'public good', in light of events in the United Kingdom, particularly when DGR status is at risk.

6. Costs of Regulation

It must also be considered that any addition to the compliance burden for independent 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 Association 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.

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 further development of independent schools.

7. Conclusions

The Association would, in principal, support changes that would improve the transparency, accountability, efficiency and effectiveness of schools and associated DGR funds as not-for-profit entities, subject to the following points:

- No addition be made to the compliance burden of 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 and accountability be recognised.
- The concept of 'public good' be clearly and appropriately defined.
- Any interpretation of 'public good' allow for altruistic extensions of activities beyond the set aims of an institution.
- Any regulatory approach favour self regulation for schools, given school specific accountability regimes that are currently in place.