



**Non-State Schools
Accreditation Board**

24 September 2014

Ms Rosemary Menkens MP
Chair
Education and Innovation Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Menkens

I refer to the Education and Innovation Committee's 28 August 2014 email to the Non-State Schools Accreditation Board ('the board') inviting written submissions on the *Education and Other Legislation Amendment Bill 2014*.

The board wishes to make a number of comments on the Bill in respect of proposed amendments to the *Education (Accreditation of Non-State Schools) Act 2001* ('the Accreditation Act'). Each of these is discussed briefly in turn:

Meaning of a non-state school

The board has limited knowledge of the context for this proposed amendment but notes that in essence this amendment retains the meaning that a non-state school cannot only offer a curriculum that is, or is a variation of, the whole or part of the primary or secondary curriculum of a foreign country.

Amendment to the meaning of director under the Accreditation Act

The board considers the proposed amendments are a reasonable solution to clarify the governance arrangements for non-state schools governed by corporations established by letters patent under the repealed *Religious Educational and Charitable Institutions Act 1861* ('the RECI Act').

The board understands the proposed amendments will enable letters patent corporations that are governing bodies of non-state schools to nominate or elect additional persons to 'act' as directors for the purposes of the Accreditation Act. Additionally, the governing bodies must within 14 days notify the board of any appointment of nominated person/s.

The board also recognises that governing bodies established by letters patent may choose not to nominate additional persons as directors.

Whether or not a person is a director of the governing body of a school is an important concept for the discharge of the board's functions under the Accreditation Act. The Accreditation Act makes reference to the directors of a governing body in many places but the most significant contexts include:

- i. requirements for directors of governing bodies to hold current blue cards or exemption cards;
- ii. factors for the Board to take into account in assessing the suitability of governing bodies under section 39 – e.g. conflicts of interest affecting directors, the conduct of directors relative to the operations of the school and whether the directors have been convicted of any indictable offences; and
- iii. the criminal histories of directors.

The board advises that there is also a small subset of entities that are incorporated under legislation other than the Corporations Act and letters patent corporations, which have been identified by the board as having discrepancies between their constituent documents and the persons identified as the directors of the governing body.

The proposed amendments as they stand do not address the governance issues identified by the board in relation to this small subset of entities.

The board considers that these governance issues could be resolved through further amendments to the *Education (Accreditation of Non-State Schools) Act 2001*, specifically to the proposed Section 7AA. Particular details of these further proposed amendments are included in Attachment 1.

It is the board's opinion that such a legislative approach would solidify the board's decision-making capacity in relation to these entities and the board would welcome these additional modifications to the current suite of proposed amendments.

Amendment of s 39 (Suitability of governing body)

The board supports the inclusion of these definitions into the current legislation to provide greater clarity.

Alignment of criminal history checking provisions

The board notes the proposed amendments are to ensure consistency across legislation in respect of criminal history screening processes for members of the board and the Non-State Schools Eligibility for Government Funding Committee ('the funding committee'), as applied by 135(4) of the Accreditation Act.

The board considers these proposed amendments are matters for government and supports the proposed amendments.

Special assistance

Currently the Accreditation Act does not deal with special assistance schools or special assistance programs. However, the board and the funding committee are cognisant during their decision making processes of whether proposed, or existing accredited or provisionally accredited schools, are to cater specifically for disengaged students.

In respect of the board's deliberations, this understanding impacts on consideration of a range of matters such as the suitability of site, facilities, number and types of staff, and whether the educational programs meet the needs of the students that are disengaged from mainstream education.

All five criteria that the funding committee must consider in making a recommendation and reporting to the Minister for Education, Training and Employment under the Accreditation Act are influenced by whether a new or existing school is or is proposed to be a special assistance school.

The board therefore considers it is prudent that recognition of special assistance as an attribute of accreditation is within the Accreditation Act.

The board is similarly supportive of the proposed inclusion of the provisions to enable flexibility for special assistance schools to operate on a temporary site for a limited period of time, in certain circumstances, to re-engage disengaged youth into education. The providing of a notice to the board, in the approved form, enables the board to have oversight over the inclusion of this provision.

The transitional provisions proposed for schools currently recognised or under consideration as special assistance schools seem appropriate in the circumstances.

Members acknowledge the amount and complexity of the detailed work which has gone into the review of the amendments to the Accreditation Act, and in formulating policy leading to this Bill.

The Honourable John-Paul Langbroek MP, Minister for Education, Training and Employment, and the relevant responsible officers of the Minister's department should be commended for their work.

Members of the Board have asked me to thank the Committee for the opportunity to comment on the Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Vi McLean', written in a cursive style.

Emeritus Professor S Vianne (Vi) McLean AM
Chairperson

Ref: 14/329278

Attachment 1:

Further suggested amendments to the *Education (Accreditation of Non-State Schools) Act 2001* are [highlighted](#) below, as proposed by the Non-State Schools Accreditation Board:

Insertion of new s7AA

After section 7—

insert—

7AA Meaning of director

(1)A **director**, of a school's governing body, is –

- a. if the governing body is a company under the Corporations Act—a person appointed as a director of the governing body; or
- b. [if the governing body is an incorporated association under the Associations Incorporation Act 1981—a person appointed as a member of the management committee of the governing body; or](#)
- c. if the governing body is a RECI Act corporation—
 - i. a declared director of the governing body, and
 - ii. if all declared directors of the governing body, for the time being, nominate a person as a director of the governing body—the person; or
- d. [if the governing body is an incorporated religious entity that does not fall within paragraph \(a\), \(b\) or \(c\)—a person who is a member of the nominated management entity of the governing body; or](#)
- e. otherwise - a person who is, or is a member of, the executive or management entity, by whatever name called, of the governing body.

(2)In this section –

declared director, of a school's governing body that is a RECI Act corporation, means—

- a. a person named in the letters patent for the governing body; or
- b. a successor of a person mentioned in paragraph (a).

letters patent, for a school's governing body that is a RECI Act corporation, means the letters patent issued under the repealed *Religious Educational and Charitable Institutions Act 1861* establishing the governing body as a body corporate under that Act.

Note—

Letters patent under the repealed *Religious Educational and Charitable Institutions Act 1861* are continued in force under the *Associations Incorporation Act 1981*, section 144.

(3) Amendment of s 167 (Notification of change in circumstances)

Section 167(2)(e)—

omit, insert—

- e. for a governing body that is a RECI Act corporation—the nomination of a director under section 7AA(1)(c)(ii);
- f. [for a governing body that is an incorporated religious entity—the governing body's nominated management entity;](#)
- g. any other change in the governing body's, or school's, circumstances prescribed under a regulation.

(4) Amendment of sch 3 (Dictionary)

(1) Schedule 3, definition director—

omit.

(2) Schedule 3—

insert—

director, of a school's governing body, see section 7AA.

incorporated religious entity means a religious entity established under specific legislation allowing for the incorporation of entities related to a particular church or religious group.

Example—

Roman Catholic Church (Incorporation of Church Entities) Act 1994 and Anglican Church of Australia Act 1895

nominated management entity, of a governing body, means the entity that is:

- (a) established under the governing body's constitution or rules as being responsible for management of the governing body; and
- (b) notified to the board by the governing body.

RECI Act corporation means a corporation that is incorporated under the repealed *Religious Educational and Charitable Institutions Act 1861*.