

**Queensland Catholic Education Commission**

Level 1, 143 Edward Street, Brisbane Qld 4000

GPO Box 2441, Brisbane Qld 4001

Ph +61 7 3316 5800 Fax +61 7 3316 5880

email: [enquiries@qcec.catholic.edu.au](mailto:enquiries@qcec.catholic.edu.au)[www.qcec.catholic.edu.au](http://www.qcec.catholic.edu.au)

ABN: 57 525 935 419

# Education (Accreditation of Non-State Schools) Bill 2017

## Submission from the Queensland Catholic Education Commission

June 2017

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### Introduction

The Education (Accreditation of Non-State Schools) Bill 2017 was introduced into the Queensland Parliament on 9 May 2017. The Bill will replace the current *Education (Accreditation of Non-State Schools) Act 2001* (the Act), which establishes the Non-State Schools Accreditation Board (the Board) and regulates the accreditation and eligibility for government funding of non-state schools in Queensland.

The Queensland Catholic Education Commission (QCEC) welcomes the opportunity to make a submission on the Bill to the Education, Tourism, Innovation and Small Business Committee. QCEC is the peak strategic body with state-wide responsibilities for Catholic education in Queensland. This submission is provided on behalf of five Diocesan Catholic School Authorities and 17 Religious Institutes and other incorporated bodies which, between them, operate a total of 302 Catholic schools that educate more than 147,000 students in Queensland.

Non-state schools are a vital and valuable part of the overall schooling sector in Queensland, with 504 accredited non-state schools educating approximately 266,000 students. This central importance was recognised by the passing of the Act and the establishment of the Board, putting in place appropriate regulatory arrangements to enable non-state schools to continue making such an essential contribution.

Since the start of these arrangements in 2001, QCEC has been an active participant via membership of the Board and Eligibility for Government Funding Committee. This practical experience and comprehensive understanding of how regulatory arrangements impact upon schools informs the following comments on the Bill.

## Consideration of the Bill

Overall, QCEC is supportive of many of the changes being introduced by the Bill. These include:

- Continuation of the Board as an independent statutory body responsible for the accreditation of non-state schools.
- Streamlining of the process for securing eligibility for government funding, which will be determined by the Board based on a school not being operated for profit and not having a direct or indirect relation with another entity that could compromise its financial decision making.
- Discontinuation of the public notification requirements accompanying applications for new schools.
- Removal of the stage of provisional accreditation, with a school instead granted accreditation if the school has a suitable governing body and is deemed likely to comply with accreditation criteria from the student intake day.
- Rationalisation of the processes for the amalgamation and division of schools.

All of these changes simplify and streamline the processes and procedures around the accreditation of non-state schools and will ensure that schools do meet accreditation criteria from the student intake day, not at a later date as is currently provided. This is a positive outcome that will improve the efficiency of the regulatory arrangements, while at the same time maintaining an appropriate level of oversight and accountability.

## Areas of Concern

Although the central approach taken in the Bill is favourable, two issues in particular require further clarification and possible modification.

### Schools operated for a profit

QCEC fully supports the position that only schools operated on a not-for-profit basis should be eligible for accreditation and government funding. This restriction is present in the current *Education (Accreditation of Non-State Schools) Act 2001*, with the following definition applying:

#### **7 School not operated for profit**

For this Act, a school is *not operated for profit* only if any profits made from the school's operation are used entirely to advance the school's philosophy and aims, as stated in the school's statement of philosophy and aims.

The current definition represents a logical and sound way to assess whether a school is being operated for profit. Funds remaining after a school's operations have been financed, i.e. profits, must only be utilised to advance a school's statement of philosophy and aims, which comes under the prescribed accreditation criteria and is therefore subject to approval by the Board.

A slightly different approach to this issue is taken in the Bill. Rather than defining when a school is not operated for profit, the Bill defines when a school will be considered as being operated for profit.

#### **7 School operated for profit**

For this Act, 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.

Within the context of profit, the new definition profit, but instead to 'income arising from the school's operation'. While the term 'income' is not defined in the Act, it is noted that for a similar purpose, the *NSW Not-For-Profit Guidelines for Non-Government Schools* define income in the following manner:

Income in relation to a non-government school, means all revenue and other financial benefits accruing to the school in the course of its operations, including (but not limited to) all State and Commonwealth financial assistance paid to the school, all school fees and parental contributions paid to the school, and all donations and other payments made to the school for any purpose.

The inclusion of Australian and Queensland Government funding under the category of income raises the issue that such funding is provided subject to legislated use conditions independent of the proposed section 7 above. Under the *Australian Education Act 2013*, for example, Australian Government funding is provided to approved system authorities (not schools) to be used for prescribed purposes under section 29 of the *Australian Education Regulation 2013*. These purposes include meeting centralised administrative costs to do with curriculum implementation, enhancing principal and teacher performance and professional development, participation in national assessment programs, and school improvement frameworks and plans. Additionally, under subsection 78 (3) of the *Australian Education Act 2013*, an approved authority for more than one school is to distribute funding in accordance with a needs-based funding arrangement that complies with prescribed requirements (in the context of the Queensland Catholic system, this is referred to as 'Group Funding').

In a similar manner, Queensland Government funding is paid to governing bodies (not schools) for use in the operation of schools under section 369 of the *Education (General Provisions) Act 2006*. In accordance with the Ministerial *Non-State School Recurrent Grant Policy* use of funds requirements, a governing body of more than one school may use the funds provided to meet the teaching and general staff salaries of its schools in a centralised process without actual revenue being transferred to schools.

Given this context, the concept of 'income arising from a school's operation' may require further clarification in the legislation and Explanatory Memorandum. Approved authorities/governing bodies are paid Australian and Queensland Government funding to operate their school/s and fulfil all of the legislated conditions attached to the provision of this funding. In addition, the Australian and Queensland Governments periodically enter into direct contractual arrangements with approved authorities/governing bodies via service agreements for the provision of funding or services to schools for special purposes, which may or may not result in the direct transfer of revenue (i.e. 'income') to the relevant schools.

There are two practical examples which highlight the difficulty which may unintentionally arise under the new definition:

- **Example 1:** A school may attract Australian Government funding (which could be regarded as income), a portion of which is used in accordance with relevant legislative conditions for the expenses associated with targeted education programs. Is the funding which the school contributes to this program income and, if so, is that income used solely for the purpose of the operation of that school?
- **Example 2:** The centralised payment of certain expenses, such as salaries, which are used in respect of a system of schools. Would the use of funding by a system in this way be regarded as the use of income in the operation of each of its schools?

To clarify what 'income arising from a school's operation' means, it is suggested that this be limited to actual revenue transferred to a school for its operation. This would strengthen and reinforce the objective of the proposed section 7, which aims to capture the situation where a school makes decisions or takes actions about the allocation of financial resources that are not connected to facilitating the

operation of the school. This may be accommodated in the Explanatory Memorandum by inclusion of the following words:

**For the purpose of section 7, income arising from the operation of a school means actual revenue received by a school for its operation.**

In a similar manner, the concept of the 'operation of a school' can be subject to a range of interpretations. QCEC has taken this issue up with the Department of Education and Training, with the Department stating that it is intended that what constitutes the operation of a school will be interpreted broadly. A suggestion has been made that the Explanatory Memorandum to the Bill state that when considering if income is being used for the operation of a school, the Board may consider a school's approved statement of philosophy and aims. QCEC supports this suggestion, but considers that a statement to this end should be included in the new Act, rather than just the Explanatory Memorandum, by inclusion of the following words after section 7:

**For the purpose of considering if income is being used for the operation of a school under section 7, the Board may consider a school's approved statement of philosophy and aims.**

Additionally, as noted above, school funding under Queensland and Australian Government legislation is paid to school governing bodies, not to schools. Governing bodies with more than one school have an essential role to play in the operation of schools, through the delivery of functions and services that can most cost effectively, and sometimes only, be delivered by that authority. An example of this is information technology provision, support and backup provided across a number of schools. Another example is the provision of services for students with disabilities, which may often involve the employment of specialist staff at an authority level.

To ensure that this area of school operations is adequately covered by the new definition of 'for profit' in section 7, it is suggested that the Explanatory Memorandum to the Bill include a statement recognising the necessary role of a Governing Body or an approved system authority (for a system of more than one school) in the operation of schools, as set out below:

**For the purpose of section 7, the operation of a school includes the operation of a school's Governing Body or an approved system authority (for a system of more than one school) to the extent that it relates to the operation of the school.**

### **Powers of authorised persons and offences**

Chapter 4, Part 2, of the Bill grants a range of powers to 'Authorised Persons', as well as creating a number of new offences. The Bill incorporates the two existing roles of Assessor and Auditor within the one designation of Authorised Person, although it is understood that the assessing and auditing roles are likely to be carried out by separate individuals with the requisite skills and background.

The powers that are granted to Authorised Persons are vastly greater than any currently in place under the existing Act. The powers granted - including applying for a warrant, search powers, and seizing and securing evidence - are extensive in nature and scope. Similarly the offences - including failure to create a document upon request, failure to give information and tampering with seized things - are greater in number and more prescriptive than previously.

It is understood that the objective informing the creation of these new powers and offences is to ensure that the Board has sufficient ability to investigate schools and others that are not compliant with the Act. While QCEC supports this objective, given the significant expansion of powers and compliance requirements involved, it is proposed that these provisions be subject to a formal review within two years of their enactment. This would be to evaluate how the new powers and offences have been used, to evaluate if NSSAB has sufficient resources to adequately and effectively carry out these new roles, and to assess whether any adjustments are required for the future.

QCEC would be happy to discuss this submission with the Committee further if that was deemed appropriate or useful.

A handwritten signature in black ink, appearing to read 'Lee-Anne Perry', with a large, stylized loop at the end.

**Dr Lee-Anne Perry AM**  
Executive Director