



# ***EDUCATION, TOURISM, INNOVATION AND SMALL BUSINESS COMMITTEE***

**Members present:**

Mr SJ Stewart MP (Chair)  
Miss VM Barton MP  
Mr MA Boothman MP  
Mr BM Saunders MP  
Mr EJ Sorensen MP  
Mr RA Williams MP

**Staff present:**

Ms S Cawcutt (Committee Secretary)  
Ms M Coorey (Assistant Committee Secretary)

## **PUBLIC HEARING—EDUCATION (ACCREDITATION OF NON-STATE SCHOOLS) BILL 2017**

### **TRANSCRIPT OF PROCEEDINGS**

**WEDNESDAY, 14 JUNE 2017**

**Brisbane**

## WEDNESDAY, 14 JUNE 2017

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### **Committee met at 11.21 am**

**CHAIR:** Good morning, everyone. I declare open this public hearing for the committee's inquiry into the Education (Accreditation of Non-State Schools) Bill 2017. On 9 May 2017 the Minister for Education, the Hon. Kate Jones MP, introduced the bill to parliament. The parliament has referred the bill to this committee for examination, with a reporting date of 14 July this year.

My name is Scott Stewart. I am the member for Townsville and chair of the committee. With me here today are: Miss Verity Barton, member for Broadwater and deputy chair, Mr Mark Boothman, member for Albert; Mr Ted Sorensen, member for Hervey Bay; Mr Bruce Saunders, member for Maryborough; and Mr Rick Williams, member for Pumicestone.

Our purpose today is to hear evidence from two stakeholders who have made submissions as part of the committee's inquiry. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I do remind witnesses that intentionally misleading the committee is a serious offence. These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee. The proceedings are being recorded by Hansard and broadcast live on parliament's website. Media may be present and will be subject to the chair's directions at all times. The media rules as endorsed by the committee are available from the committee staff if required. Those present today should note that it is possible you might be filmed or photographed during today's proceedings. I ask everyone present to please turn off your mobile phones or at least switch them to silent mode, if you have not done so already. The program for today has been published on the committee's web page and there are hard copies available from committee staff if needed.

### **ROBERTSON, Mr David, Executive Director, Independent Schools Queensland**

### **YOUNG, Ms Judy, Assistant Director (School Services), Independent Schools Queensland**

**CHAIR:** Good morning to you both. I invite you to make an opening statement, after which committee members will ask questions.

**Mr Robertson:** Thank you, Chair. Thank you to the committee for the opportunity to discuss the Education (Accreditation of Non-State Schools) Bill 2017. Firstly, I declare that I am a member of the Non-State Schools Accreditation Board, which obviously is a subject of this bill.

As committee members are aware, the bill replaces the current Education (Accreditation of Non-State Schools) Act, which is the principal piece of legislation in Queensland regulating the non-state schooling sectors. You will also be aware that in Queensland there are 200 independent schools enrolling 120,000 students, or about 15 per cent of all of Queensland students. The current act has served the community and the non-state schooling sector well since its implementation in 2002. As committee members will be aware, there have been very few amendments to that act in that period. After 15 years of operation, it is timely that the act be updated and modernised.

ISQ has been involved in the review of the act which commenced some years ago. We have also been consulted by departmental staff on early drafts of the bill. I take this opportunity to acknowledge those departmental officers who did consult with us and considered and accommodated some of ISQ's suggested changes into the final bill.

ISQ does support the passage of the bill through parliament. It provides for a number of streamlined processes in relation to accreditation of non-state schools and reduces red tape in a number of areas. Most importantly for us, it discontinues the current system whereby there is a separate process for the determination of eligibility for government funding for non-state schools. We

have advocated for this change for quite a number of years. It is really important because it does enshrine the right of every child that attends an accredited non-state school to receive government funding support for their education.

As committee members can see from our submission, there are several other matters that we have raised where we ask that the committee may give further consideration to the bill, perhaps to make some further improvements. In particular I want to mention the key issue, which is the proposed changes to the 'for-profit' definition in the current act. That is in section 7 of the bill.

When I reflect upon this, I always ask why we are changing a current provision in an act. Having looked at this, I am not clear as to why we would change the current provision. I do not see a particular issue there. I believe the legislation does give the accreditation board the power to deal with any issues of non-state schools where it considers there may be a prospect of them operating for profit. I would encourage the committee in that regard, and I am sure you will ask some questions about that. Again, I thank the committee for the opportunity to appear and I am happy to answer any questions.

**Miss BARTON:** Thank you so much for coming in. One of the changes in the legislation is the provision for the review of decisions of the board no longer going to the minister but going to QCAT. Did ISQ have a particular point of view on that change and its appropriateness or not?

**Mr Robertson:** Yes. As committee members would be aware, all appeals under the current act are to the minister. In the case of the current act and eligibility for government funding, that is not a correct process because it is actually the minister who makes the decision. It does seem a bit unusual that people appeal to the person who made the decision. With the bill, of course, that separate process for funding eligibility is discontinued so that resolves that problem.

We take a cautious approach to that, I have to admit. We can understand the legal and the public perceptions about making appeals to QCAT. However, as I said in our submission, it is a matter that I think the committee might like to give some consideration to as to whether appeals should in the first instance go to the minister, given that he or she will not be involved in the decision-making about accreditation. I would also reflect that, with appeals under the bill going to QCAT, the minister will have no decision-making responsibility for non-state schooling at all. I think that is something that perhaps the committee might like to consider.

**Miss BARTON:** Should a school wish to go through the process of making an appeal—obviously ISQ has a role in terms of being an advocate for independent schools in Queensland—would ISQ take on a role as part of that appeal in terms of supporting the school or giving them advice about how to do it, given that QCAT will attract some costs in terms of managing that, or is it all within the remit of the school?

**Mr Robertson:** We certainly would support any independent school going through an appeal process. I am not particularly familiar with the workings of QCAT, but it is a legal process. Therefore, probably at the end of the day we would potentially be advising schools to get legal advice. I think that would be a shame in the case of some decisions which probably are more administrative, but I do think it would be a shame if we put schools through a very legalistic process, because they do have to spend money on legal advice.

**Miss BARTON:** I might ask about the meaning of 'operated for profit'. When the department provided the committee with a briefing, we did ask the department to provide us with some advice about that, because I think we were all conscious that there could be some unintended consequences in terms of an interpretation. As I understand it—I am happy to stand corrected, David, because you would know more about the operation of the board than I would—there will still be the ability for the board to take a broad interpretation of the definition. Are you able to expand on some of your concerns about providing perhaps a more narrow definition and the problems that might cause for independent schools?

**Mr Robertson:** I think the first point is that the intent of the legislation is very clear, and we would totally support that. It is rational that schools have to spend on their school operations. However, the definition has been narrowed. In the current act it talks about spending a school's profits on things that are within the aims and the philosophy of the school.

To use a very specific example, I use the case of early childhood education. Of Queensland's 200 independent schools, close to a hundred do provide early childhood services. I suppose it would be open to some interpretation: are early childhood services the operation of a school? A school is defined in the general provisions act and it carries over to the accreditation act. It does not particularly legally include the operation of early childhood. I do not think it would be the intent of the government to want to put any doubt over a school operating early childhood including kindergarten et cetera. That would be one specific example.

The other thing we have raised in our submission—I know that it is different jurisdiction—is that the Australian government has a Charities Act and the ACNC Act. They have particular definitions around ‘not-for-profit’ and ‘for-profit’. There is a potential for conflict between the two and we could have a quite unusual situation where the Non-State Schools Accreditation Board determines that a school is for-profit for whatever reason but that school may maintain a charity status at the federal level which would also imply that they are not-for-profit. Whilst it would be ideal to synchronise the definitions, we do appreciate that it is a different jurisdiction in terms of legislation so we recognise the difficulties around that. There would be potential other unintended consequences; however, like all of these things, it probably comes down to a common-sense application of the legislation by the board. We hopefully have some confidence that that would be the case.

We did provide some feedback to the department on this, and they have included in the explanatory notes the fact that the board can take into account a school’s philosophies and aims in any determinations under the proposed section 7. While we take some comfort from that, I suppose I think of the current act. There were certain things in the explanatory notes and the second reading speech, but people forget about them after 10 years and we do not go back to the explanatory notes when looking at legislation.

In summary, with a common-sense and practical application of the legislation, yes, we would be confident that the board would be able to interpret it correctly, but I think legislation also needs to be protected against people who perhaps might want to use it for other purposes.

**Mr WILLIAMS:** In that the state is contributing funding, I notice that the board has the final say as to the appointment of board members. The minister can ask for a review but has no power to change that decision. Can you elaborate on that?

**Mr Robertson:** In terms of decisions of the board?

**Mr WILLIAMS:** Yes, as in the minister’s right to—

**Mr Robertson:** As I understand the bill, the minister has a right to instruct the board—ask the board to have a look at another issue, but then the board would still have the right to make the decision. I am not sure the minister under the legislation has the right to overturn a decision of the board.

**Mr WILLIAMS:** So that is your understanding as well, thank you.

**CHAIR:** There is nothing further. Thank you, you have done a great job, then. You have not created many questions for us!

**Mr Robertson:** Thank you, Chair. Thank you, committee members.

**PERRY, Dr Lee-Anne, Executive Director, Queensland Catholic Education Commission**

**WOOLLEY, Mr Chris, Director, Governance, Strategy and Corporate Services, Queensland Catholic Education Commission**

**CHAIR:** I now welcome Dr Lee-Anne Perry and Mr Chris Woolley from the Queensland Catholic Education Commission. I invite you to make an opening statement, after which the committee members may ask some questions.

**Dr Perry:** Thanks very much, Mr Stewart. The QCEC, on behalf of the Queensland Catholic school sector, thanks the committee for the opportunity to comment on the Education (Accreditation of Non-State Schools) Bill 2017. QCEC has been represented on the Non-State Schools Accreditation Board since its establishment and I am currently a member of the board. We support the work of the board in administering the Education (Accreditation of Non-State Schools) Act. I am speaking today on behalf of our 302 Catholic schools across Queensland and over 147,000 students.

The bill before the committee will allow the board to continue this important work by providing an appropriate accreditation framework for non-state schools in Queensland. Overall, QCEC and the Catholic schools sector commend the bill to the committee and members of the House. Many aspects of the bill are highly positive and bring improvements overall to the accreditation arrangements. These include continuation of the board as an independent statutory body, streamlining of eligibility for government funding processes, discontinuation of the public notification requirement for new schools, and the removal of the stage of provisional accreditation. There are, however, three areas in which we believe the bill may potentially be strengthened. They relate to providing further clarification in the explanatory memorandum or in the bill regarding clause 7 and the new powers for authorised persons.

I turn first to clause 7, the provisions to ensure non-state schools continue to operate on a not-for-profit basis. Non-state schools presently are required to operate on a not-for-profit basis as a condition of eligibility for government funding. QCEC strongly supports that position. How this is expressed in the bill is an important issue for Catholic and for all non-state schools. Presently clause 7 of the bill states that a school will be regarded as operating 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 is distinct from the approach under the current act where the not-for-profit requirements are expressed in the negative as follows –

... 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 new definition introduces two important concepts: the concept of income used in the operation of a school as a basis for the assessment of profit. We think it is important for the explanatory memorandum to clearly explain what is intended by the terms 'income' and 'in the operation of the school' in the context of their use in clause 7.

QCEC believes it is the intention of the bill that income in the context of its use in clause 7 is supposed to mean income or revenue which a school actually receives as a result of its operation. It follows that this income must be used for the school's operation, and we strongly support that. However, schools which operate within an approved system authority may attract funding which is allocated in an approved way under legislative requirements for all its schools. This might be for central expenses like legal costs or targeted curriculum programs. These expenses are drawn from funding, or income, which all schools may attract but which is distributed according to need within a system.

Under Queensland accreditation arrangements, government funding is also lawfully used to support approved school authorities in respect of their own operation. We do not interpret the bill as intending to change those arrangements. The role of school authorities therefore needs to be recognised when considering what is the operation of a school.

For these reasons, we think it is important that the purpose of the phrases 'income arising from the school's operation' and 'the operation of the school' are clearly qualified in the explanatory memorandum to assist schools to understand the legislative intention. This could be achieved by including in the explanatory memorandum the following qualifying statements. Firstly, for the purpose of clause 7, 'income arising from a school's operation' is revenue that is received by schools for their operation and, secondly, for the purposes of clause 7, the operation of a school includes the operation of a school's governing body to the extent that it relates to the operation of the school.

The second area we would like to address is the exclusion of the school's philosophy and aims as a factor to consider when assessing whether a school is operating for profit. For the above reasons, we also think the intention of the bill in respect of clause 7 is that the board may continue to have regard to a school's statement of philosophy and aims in considering the scope of the operation of a school in the context of clause 7. In the current act this is expressly provided for, as I have noted previously. While the explanatory memorandum makes it clear that the board may continue to consider the approved statement of philosophy and aims in determining the scope of a school's operations, to prevent future doubts in terms of the interpretation of this provision we suggest that this statement be made in the bill expressly. This could be achieved in the bill by the inclusion of these words at the end of clause 7 as outlined in our submission.

Finally, I turn to the area of powers of authorised persons and offences. We wish to draw your attention to these new powers and offences related to authorised persons. QCEC has no issue with the appropriate use of powers by authorised persons to further the aims of the accrediting authority in ensuring schools continue to comply with their regulatory obligations. In fact, we welcome this and strongly support it. Our respectful suggestion to the committee is that, given a number of the powers and offences being introduced are new, their operation may benefit from review within a two-year period to ensure they are functioning as intended. QCEC considers that the above suggestions will improve what is overall a good bill and will assist all non-state schools with its future interpretation. With the above qualifications, we commend this bill to the committee and to members of the House. I am happy to take any questions.

**Miss BARTON:** Lee-Anne, I want to touch on your concerns around section 7. One of the concerns I would have in terms of how the definition is interpreted is making sure that when schools operate within a sector and participate in multischool events, whether it is cultural or sporting—I am not sure how those operate in the sense of whether some schools that are hosting them are using their potential profits, or their income, to ensure those events are able to operate effectively. For example, if Stuartholme was hosting a tennis competition for girls Catholic schools or St Laurence's was hosting a boys cricket competition, would you be concerned that that would be incorporated in a very narrow definition of section 7 and potentially be caught up there?

**Dr Perry:** I think that is why we are recommending the re-inclusion of 'philosophy and aims'. It would be common in any school, whether it is a state or non-state school, that part of your aims would be to have a broad, enriching curriculum offering—cultural, sport, academic—which might involve hosting a sports carnival or a cultural event. If that is clearly specified as part of the philosophy and aims of the school, I would think that would be very comfortably sitting under the bill. With the elimination of that, that is where these doubts we think potentially could come. We do not believe that is the intent of the changes to the bill but we are concerned that those sorts of activities which are clearly within the philosophy and aims of schools may be called into question.

**Miss BARTON:** With respect to the authorised persons, when the department originally briefed the committee on the bill I had asked about the checks and balances and whether or not there are check and balances around the approval of warrants or the right for authorised persons to go on to school grounds without the permission of the school and remove documentation. With QCEC suggesting that there should be a review of those powers, would it be appropriate to read into that that you have concerns about the checks or balances, or is it more about wanting to make sure that the regime in place is being appropriately used?

**Dr Perry:** It is the latter. They are new, quite extensive powers and it would be our view that when you introduce something quite different you should ensure they are enacted in the way they are intended. It is also to ensure they are properly resourced in terms of the work of the board, because potentially it could increase the workload of the board. We would want to ensure they are appropriately resourced to do that and that the application of those new powers is for the intent for which the bill was determined. We just think it is prudent and good governance to build in a review period.

**Miss BARTON:** Picking up on David's concerns about the right of appeal no longer being to the minister but rather going to QCAT, does QCEC have any concerns? What potential implication might that have on schools and whether or not the dioceses or the religious organisations have to offer more support for those schools if they went through that process?

**Dr Perry:** We are comfortable with the change, but we would be comfortable to remain with what we have at the moment, so we do not have a strong view one way or the other. We can see the arguments about having an arm's-length independent body. Again, we can understand and support that intent. We recognise, as David pointed out, that this will totally remove the minister from any involvement with non-state schools. Some could see that as a positive; some could see it as a negative. We are, I suppose, neutral on that. We do not oppose it and we can see some value in that.

We would have the same caution as I think David expressed around what that might potentially cost schools. None of us wants to see school money spent on litigation. That would be a caution that we would have. QCEC, as with ISQ, would provide support and advice to schools if that was sought, but it would have to be funded by the schools from their school income.

**Mr SORENSEN:** Just as an example, a school may attract Australian government funding which would be regarded as income, a portion of which is used in accordance with the relevant legislation conditions for the expenses associated with a targeted education program. Are there difficulties between the state and federal governments with those programs or different lines like that?

**Dr Perry:** It was the example I was giving before where many of our schools operate within systems of schools. For example, Brisbane Catholic Education operates as a system. They, just as state schooling does, might have some centrally developed, driven and resourced curriculum programs and they would be drawing on federal funding, state funding and private income to do that. It is just ensuring that programs which might be centrally developed and administered are not seen to be in any way in conflict with the intent of the bill.

**Mr WILLIAMS:** You have given us these statements that you would like to see included at the end of proposed section 7, referring particularly to the prohibited arrangements. Our goal is to make sure that we do not create a monster in this bill. Can you give me a bit more of an outline on where you think this will deal with prohibited arrangements?

**Mr Woolley:** I think the suggestion we are making is for only one inclusion to the bill, and that concerns the inclusion of the philosophy and aims. We are simply suggesting that because it reflects the current legislative arrangements. That is where we are coming from. I am not sure how that conflicts with the prohibited arrangements.

**Mr WILLIAMS:** I am just seeing where it fits in for you guys. I think we did have mention of a school operating preschools and probably even other centres. I think reference was made to maybe even a childminding centre and things like that. It is not in your notes there, but I am just broadening the horizon so that we make sure we encompass everything in this bill.

**Mr Woolley:** I think there is one mention in the explanatory memorandum. I guess an illustrative example of what would not constitute a prohibited arrangement is an arrangement between a school governing body and another entity where that arrangement encompassed payment of rent for below value, so it is protecting those type of arrangements. I think they are trying to target arrangements where people perhaps enter into arrangements where they are above market for other purposes. We would obviously be concerned about that. I think the bill adequately addresses that.

**CHAIR:** There being no further questions, this concludes today's hearing. We very much thank the witnesses who participated today. Thank you to the Hansard reporters for their time. A transcript of these proceedings will be available on the committee's parliamentary web page in due course. I declare this public hearing of the committee's inquiry into the Education (Accreditation of Non-State Schools) Bill 2017 closed.

**Committee adjourned at 11.51 am**