



Submission to the Board of Taxation on *Exposure Draft of the Charities Bill*

Introduction

This submission complements that submitted by the Independent Schools Council of Australia.

Background

The Association of Independent Schools of Western Australia is a voluntary association of 140 schools located in metropolitan Perth, and rural and remote areas of Western Australia. Member schools are a diverse group of non-government schools servicing a range of different communities. Included in the membership are:

- Schools affiliated with larger and smaller Christian denominations, for example, Anglican, Baptist, Catholic, Lutheran, Presbyterian
- Non-denominational Christian schools
- Islamic schools
- A Jewish school
- Community schools
- Montessori schools
- Rudolf Steiner schools' Indigenous community Schools
- The Speech and Hearing Centre.

Among the membership are schools with common aims and educational philosophies that are governed and administered as small systems, for example, Anglican Schools Commission schools and the schools of the Swan Christian Education Association.

The proposed legislative definition of charities is of concern to the independent school sector. If the draft legislation becomes law, independent schools will move from a situation of certainty as to their charitable status to one of uncertainty. Currently, the certainty that independent schools enjoy under common law arises from the view that institutions with a predominant charitable purpose, that of the advancement of education, are in the public benefit.

The draft legislation reflects on the objective of changing the definition of a charitable institution, particularly in respect to the explicit application of the public benefit test, in all circumstances. This policy shift, to require all entities to explicitly demonstrate public benefit, will increase uncertainty for some charitable institutions, at least in the short term.

In reviewing the exposure draft, the Association believes that independent schools will be judged to meet the requirements of the first two elements of the public benefit test in Section 7(1)(a) and (b). However the Association has concerns regarding Section 7(1)(c) and 7(2), that is, the third element of the public benefit test.

It is the issue of how sections 7(1)(c) and 7(2) will be applied that is at the core of the concerns. In the context of Western Australia, the following points should be noted:

- A significant number of independent schools have relatively small enrolments. Among these schools are:
 - Aboriginal independent community schools, where the enrolment is necessarily limited by location.
 - Schools with particular educational philosophies, for example, Montessori and Steiner schools located in rural areas or regional centres.
 - Faith based schools, since in Australia some faiths have a relatively small overall population. While the majority of such schools allow enrolments of students from families outside the faith based community, a critical mass of students of the particular faith is deemed necessary to maintain the ethos of the school.
 - In Western Australia there is one special school, The Speech and Hearing Centre for Children WA (Inc). This school provides a critical support and centre of expertise for parents and schools in assisting with the education of children with special needs.
- Uncertainty would be created for each of these groups of schools by the test that the charitable purpose of the entity *“is directed to the benefit of the general community or to a sufficient section of the general community”* given that the people to whose benefit it is directed cannot be *“numerically negligible”*.
- Uncertainty of another form also arises from Section 7(1)(c) and 7(2). Within Western Australia there is a significant variation in the level of fees charged by independent schools. A key area of uncertainty is therefore how the levying of fees will impact on the assessment of whether an individual school is judged to be *“serving the general community or a sufficient section of the general community”*.

The wide differential in school fees, which is evident among independent schools, reflects both differences in the scope of education provided by individual schools and the extent of Commonwealth and State government subsidies.

Conclusion

It would be unfortunate if the result of the legislation were to confirm charitable status for some schools and the loss of charitable status by others. It is essential therefore that the legislation recognises registered non-government schools as a class of institution which satisfies the public benefit test.

Hence, in regard to the draft legislation, the Association of Independent Schools of Western Australia supports the recommendations made in the Independent Schools Council of Australia’s submission that:

1. Section 7(2) is deleted with this aspect adequately dealt with by section 7(1) and the use of the existing common law in the interpretation of the Act.
2. The legislation provides for non-government schools to be a class of institution that satisfies the public benefit test.

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