



LT040

1 May 2013

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Indirect Philanthropy and Resource Tax Division
The Treasury
Langton Crescent
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Sent by email to: charities@treasury.gov.au

**Response to Exposure Draft
Charities (Consequential Amendments and Transitional Provisions) Bill 2013**

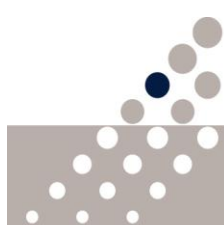
The Independent Schools Council of Australia (ISCA) welcomes the opportunity to present this submission to the Treasury on the draft Charities Bill released during April. ISCA is the peak national body covering the independent schools sector which also comprises the eight state and territory Associations of Independent Schools. Through these Associations, ISCA represents a sector with 1,090 schools and around 550,000 students, accounting for nearly 16 per cent of Australian school enrolments. ISCA's major role is to bring the unique needs of independent schools to the attention of the Australian Government and to represent the sector on national issues.

Independent School Structures

Independent schools are a diverse group of non-government, not-for-profit (NFP) schools serving a range of different communities. Many independent schools provide a religious or values-based education. Others promote a particular educational philosophy or interpretation of mainstream education.

Their legal structures can be diverse with many falling into the following categories:

- Schools that are fully owned by a church (e.g. some Uniting Church Schools);
- Schools established by state Acts of Parliament with the specific purpose of establishing the school as a charitable institution (e.g. some Grammar Schools);
- Schools which are an administrative unit operating within an Association or “system” owned by a church;
- Schools which are a company. Many of these are limited by guarantee and assets can be owned by an underlying church property trust. In some cases the company owns the school outright;
- Public benevolent institutions (e.g. some Indigenous Schools).



Some schools with common aims, religious affiliations and/or educational philosophies also belong to a system within the sector. This means that some operational functions are carried out by the system on behalf of all schools within the system. However, all schools have formal boards of governors or committees of management who are the key decision-making bodies for most independent schools and are responsible for issues such as the school's educational provision, current and future development and staffing.

Many independent schools are faith-based schools with varying degrees of legal and administrative links to their church bodies encompassing the full spectrum of faiths across the Australian community including not only the well-known Anglican, Uniting Church and Catholic schools, but also Lutheran, Baptist, Seventh Day Adventist, Islamic, Greek Orthodox, Christian and Jewish schools.

Current Charitable Benefits for Independent Schools

Independent not-for-profit schools currently qualify for the following concessions available to organisations that are considered charities:

- (a) income tax exemption;
- (b) DGR status for their school building funds, library funds and certain scholarship funds;
- (c) FBT rebates for certain benefits provided to employees (subject to annual 'caps' for each employee); and
- (d) GST-free school fees.

Schools can also benefit from certain State and Territory tax concessions, such as exemptions from payroll tax, land tax and stamp duty, although these concessions are not included in the considerations of the Discussion Paper.

Definition of Charity

It is pleasing to note that the proposed statutory definition of charity reflects the current common law with respect to the status of independent schools. The operations of a school entity is clearly of public benefit (that of education of students) and as a not-for-profit entity, this should in all situations determine that a school is a charity.

Operations of the school which should also be considered within the definition include those "core activities" of education, including those of childcare, kindergarten, primary, secondary and vocational education, as well as activities to support the school such as fundraisers by students, parents, P&F bodies where the funds go to support the operations of the school. Similarly, it is important that schools maintain access to DGR status for school building fund donations as it is often due to receipt of tax deductible donations received through this giving that schools have the capacity to provide buildings for the conduct of school.

In response to the exposure draft, ISCA has the following specific comments to make regarding some aspects of the Bill.

1. The exposure draft defines "advancing education" as "in the absence of evidence to the contrary, presumed to be for the public benefit" (s7) and also in the "Definition of charitable purpose" (s11) as being of "charitable purpose". These sections relate directly to the definition of charity (s5) which in s5 (b) (ii) includes in the definition of charity those "purposes that are incidental or ancillary to, and in furtherance or in aid of, purposes of the entity". It is very common that an independent school will have a number of smaller "groupings" e.g. Parents and Friends; Tuckshop;

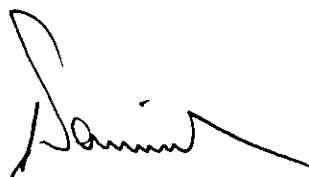
Uniform Shop; Building Fund; Foundations; Kindergarten; Child care; Outside School Hours Care, which are part of its day to day operations. We would want to ensure that all of these operations come under the definition of s5 (b)(ii). We note that s13 (1) states that “the purpose of advancing social or public welfare includes the purpose of caring for, supporting and protecting children and young people (and, in particular, providing child care services).” However, we would require assurance that these other activities which are an integral part of operating a school are also expressly included as “purposes that are incidental or ancillary” as per s5 (b) (ii).

2. Under s[11](1)(c) “the purpose of advancing social or public welfare” is the proposed new subtype of entity which includes childcare. This is elaborated on in s(13)(1) where “the purpose of advancing social or public welfare” is stated to include the purpose of caring for, supporting and protecting children and young people (and, in particular, providing child care services). We have a concern that independent schools may, under the new definitional categories, be required to seek registration under a number of subtypes, rather than a single registration under subtype (2) advancing education. A requirement to seek and maintain registration under a number of subtype would increase red tape for the independent school and would not be supported by the independent schools sector. We would see instead that these activities come under s(5)(b)(ii) as being purposes that are ancillary to the purpose of advancing education.
3. We are pleased to see that s(7) “Certain purposes presumed to be for the public benefit” includes at para (c) “the purpose of advancing education”, thereby confirming in statute the common law understanding of education as a charitable activity. However, we do have a concern about the preamble in s(7) which states this presumption of public benefit is “in the absence of evidence to the contrary”. The Act does not give any guidance as to what evidence to the contrary may be considered to reverse this presumption of public benefit and we are concerned that this may result in a subjective assessment based on unspecified “evidence to the contrary”. We suggest that the ACNC Act 2012 s(25-5)(3) provides a good measure for “evidence to the contrary” and that this (or a similar test) be included in s(7) to give guidance as to what might constitute “evidence to the contrary”.

Overall, independent schools currently operate in a dynamic educational environment which is influenced not only by changing societal expectations and demographics, but also by changing government policy. Any additional levels of uncertainty relating to their responsibilities as a charity would have a significant impact on the educational outcomes of independent schools.

ISCA looks forward to further consultation on these issues.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bill Daniels', with a long, sweeping underline.

Bill Daniels
Executive Director

How Governments Fund Independent Schools

Sources of income for independent schools

Private sources of funding (mainly parents)	55%
All government sources	45%

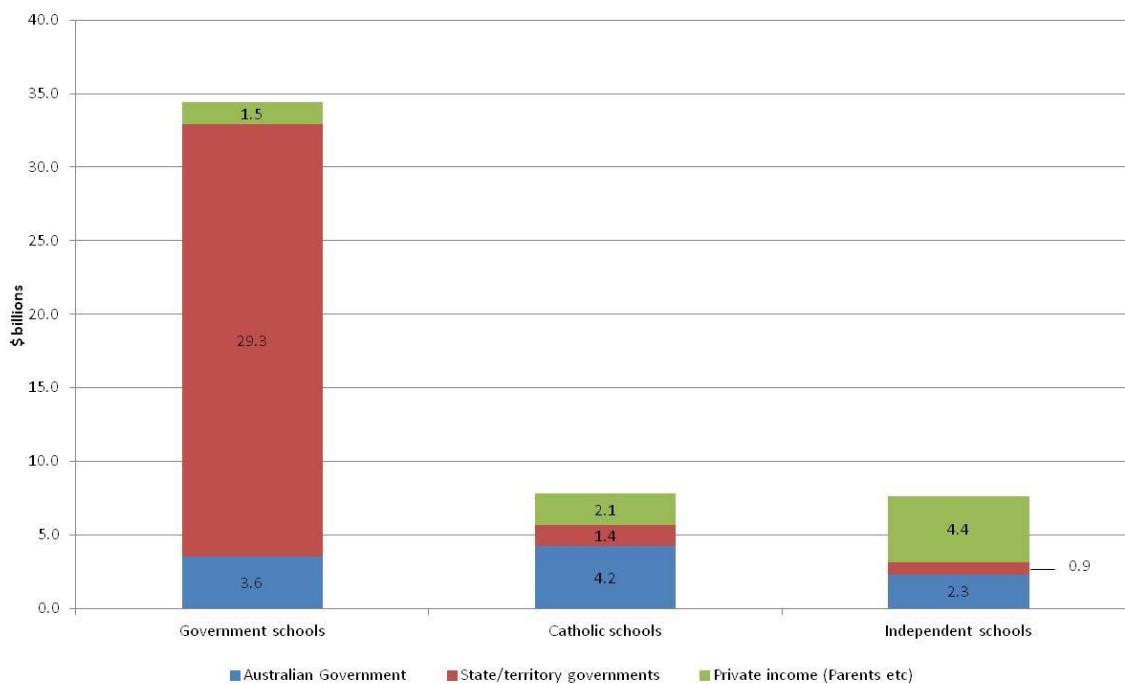
The proportions of private/government funding vary greatly from school to school.

Estimated savings to governments from the independent schools sector	\$3.9 billion p.a.
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Public funding of independent schools

All state and territory governments and the Australian Government share responsibility for the public funding of schools in Australia. State and territory governments are the main public funding sources for government schools, while the Australian Government is the main public funding source for non-government schools.

Recurrent funding for school education, 2009-10



Average government recurrent funding per student 2009-10

Government school	\$14,380
All non-government schools	\$7,427
Independent school	\$6,450

State and territory government funding

Overall, state and territory governments provide 27% of total government recurrent funding for independent schools. However the levels of funding for schools and methods used to assess them varies among the states and territory.

Australian Government recurrent funding 2009-13

Legislation authorising the Australian Government to maintain the SES funding model for non-government schools over the 2009-12 quadrennium passed federal parliament in 2008 and in 2011 an amendment was passed adding an additional year. Most of the funding is in the form of general recurrent grants. It also includes funding for capital grants and existing targeted programs, including literacy, numeracy and special learning needs, languages education, ESL new arrivals, country areas and short term emergency assistance.

During 2011 there was a major review of funding undertaken by a panel chaired by Mr David Gonski AC. The Report was released in February 2012.

Australian Government general recurrent grants

The Average Government School Recurrent Costs (AGSRC) amount is used to determine the level of Australian Government recurrent grants for non-government schools. The changes in the recurrent costs of educating a student in a government school, as measured by the AGSRC index, are the basis for annual increases in Australian Government funding for both government and non-government schools.

AGSRC amounts for 2011

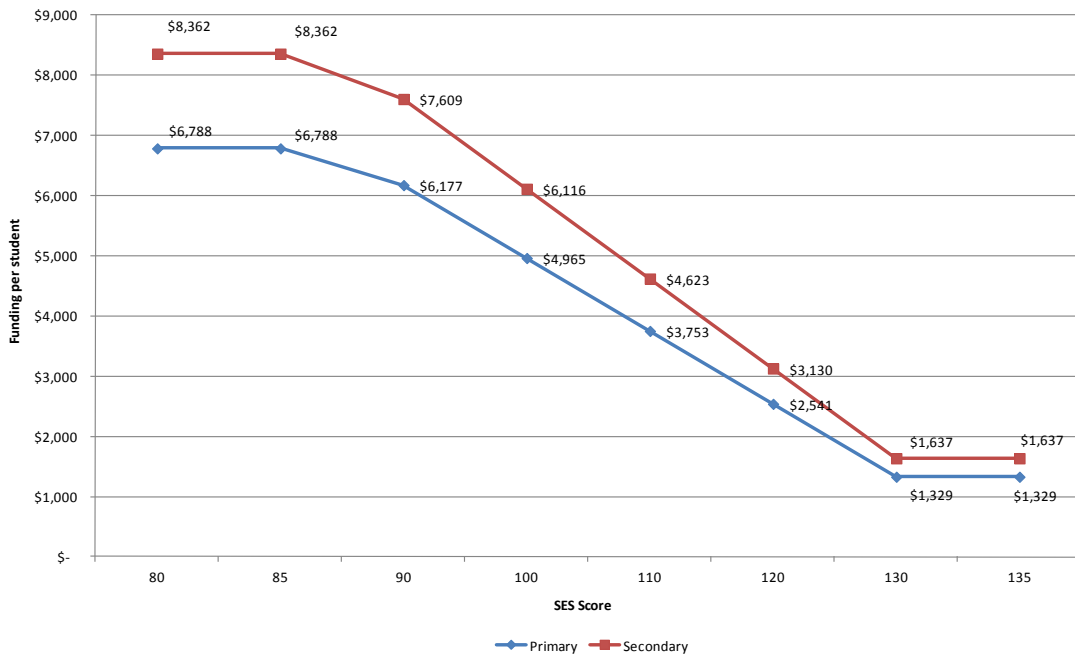
Primary	\$9,697 (6.9% increase from 2010)
Secondary	\$11,945 (4.8% increase from 2010)

Needs-based funding

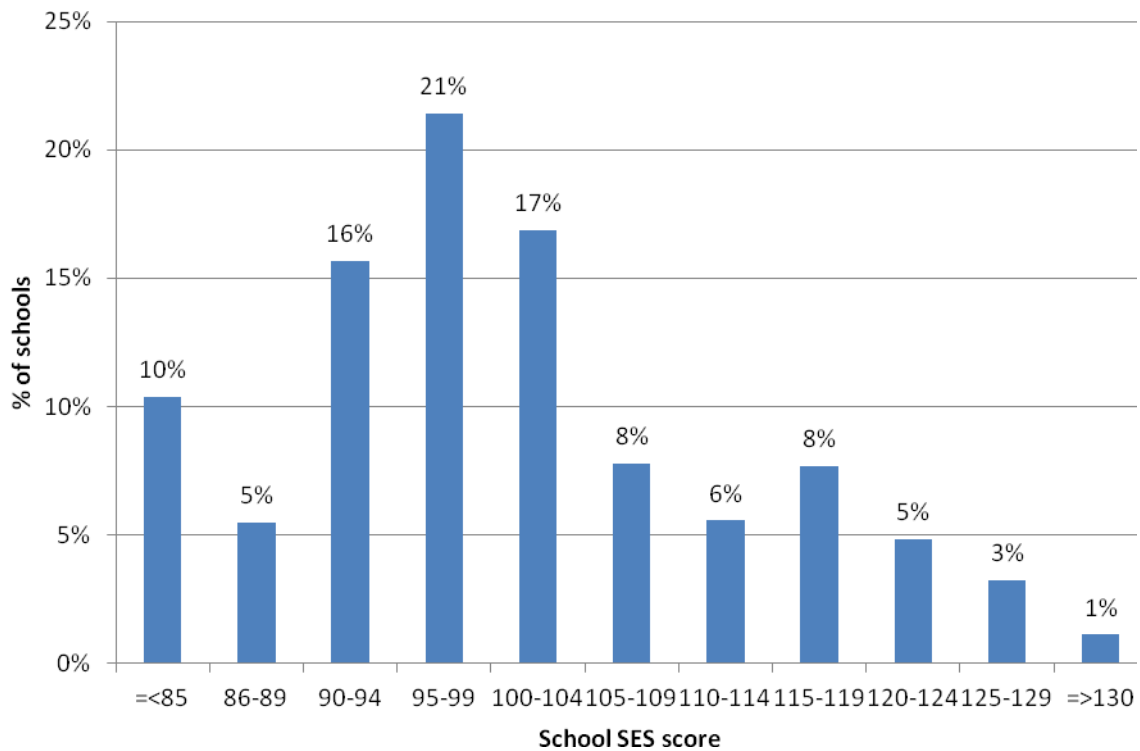
The Socio-Economic Status (SES) funding scheme for Australian Government funding measures the relative socio-economic status of independent school communities. A score is derived for each school which places it on a sliding scale of funding entitlement. SES scores range from 63 to over 130.

- schools with SES scores of 85 and below receive 70% of the AGSRC amount
- schools with SES scores of 130 and above receive 13.7% of the AGSRC amount.

Sliding scale of funding entitlement according to SES status 2011

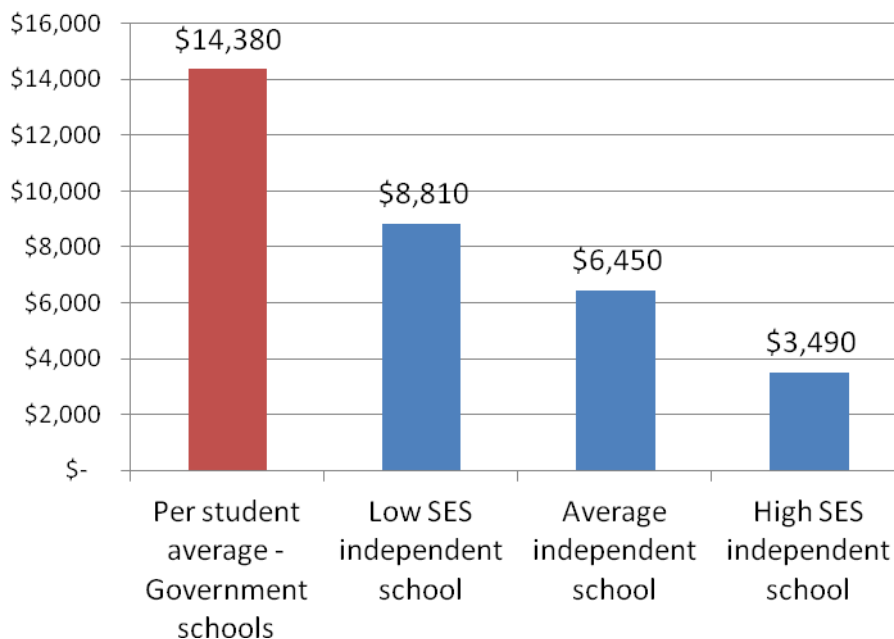


Distribution of schools by SES score range 2011



Total government recurrent funding per student 2009-10

(all government sources)



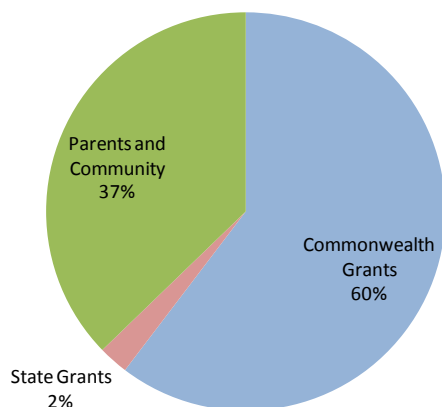
The amount of funding received from all government sources varies significantly depending on the circumstances of the school.

Capital Funding

Parents and Donors

Normally, parents and donors in independent school communities contribute approximately 80% of funds for capital developments, such as school buildings, grounds and equipment. However, all schools in Australia are currently experiencing the one-off effect of the Building the Education Revolution (BER) which will provide \$16.2 billion over four years for school capital funding projects.

Sources of funding for capital development 2010



Capital Grants Program

Independent committees called Block Grant Authorities in each state and territory administer capital grants for non-government schools on behalf of the Australian Government. In 2011 it is estimated that grants for the independent sector will total approximately \$48 million.

In the independent sector Australian Government capital grants are distributed on a needs basis, with priority given to disadvantaged school communities with the least capacity to raise funds. On average, 66 per cent of total capital funding available to independent schools goes to schools with an SES score less than 100, and 90 per cent of grants goes to schools with an SES score of less than 110.

State and Territory government assistance

In Queensland some capital grants for independent schools are provided by the state government. Several state and territory governments also provide interest subsidy arrangements.

Note: Funding figures in this document use the latest available data which is for the financial year 2009-10, or for the calendar year 2010.

For more information visit: www.isca.edu.au