

An Analysis of Submissions to the Review of Approval and Registration Processes Applying to Non-Government Schools in the ACT

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Background

Following approval by the Minister for Education and Training of three non-government school establishment applications earlier this year, a number of ACT community and advocacy groups expressed dissatisfaction with both the approvals and the processes that had been undertaken. Consequently, the Minister agreed to conduct a review of current non-government school in-principle approval and registration processes, and invited submissions from a number of interested peak community and advocacy groups and education providers.

To assist the review, the Minister sought the assistance of Narelle Hargreaves and Craig Curry to

- undertake an analysis of the submissions and identify key themes, issues and recommendations from the submissions
- check the validity of each key issue/recommendation against the current ACT Education and Training Directorate's manual, *Registration of Non-government Schools in the ACT – A guide for applicants, proprietors, principals and registration coordinators* ('the ETD manual'), and the ACT Education Act 2004 *Part 4.2 Registration – non-government schools* ('the legislation')
- consider ways in which the current procedures and practices might be enhanced to achieve greater transparency and clarity for intended and potential providers and other interested community groups, and
- provide a report to the Minister for her consideration.

In undertaking this task the authors also checked the consistency of the ETD manual with the legislation, reviewed the summary of areas to be checked by appointed ACT registration panels, and considered the non-government school approval and registration processes employed in all other Australian jurisdictions and their legislated criteria/standards and required policies.

Submissions Received

The following organisations provided submissions to the review:

Non-Government Schools Education Council (NGSEC)

Government Schools Education Council (GSEC)

Catholic Education Office (CEO)

Association of Independent Schools of the ACT (AIS)

Australian Education Union (AEU)

Association of Parents and Friends of ACT Schools (APFACTS)

ACT Council of Parents and Citizens Association (P&C)

Christian Schools Australia (CSA)

Save Our Schools (SOS)

Brindabella Christian College (BCC)

Adventist Schools Australia (ASA)

Analysis of the Submissions

In considering the submissions, we have made every effort to be as objective as possible, in both our analysis of the views put forward and the suggestions for improvement we have made, while at the same time acknowledging the ideological position influencing the views of respondents. We have also attempted to keep at the forefront of our minds that any legislation or set of guidelines directly affecting school education should always be focused on getting the best outcomes for students.

In general, the submissions from the seven interested organisations directly concerned with non-government school education were supportive of the current processes and considered they were quite robust, fair and comprehensive. However, after examining all submissions, in our view there were a number of key issues and recommendations put forward by the eleven respondents that have some merit and are worthy of consideration by the Minister. These will be considered below under six general focus areas or themes:

1. Planning
2. Community Demand
3. Communication/Consultation
4. Panels
5. Regulatory Issues
6. Appeal Rights

1. Planning

SOS, GSEC, P&C, and the CEO all expressed concerns about, or the need for more careful forward planning about the location of new school sites, and/or more broadly, school provision across the Territory. The first three organisations were of the view that demand in a region, and in particular, impact on existing schools, cannot be effectively assessed if the exact suburb/location for the proposed school is not specified in the application, and that without this degree of specificity it also makes it very difficult for the community to comment on the proposal. A requirement that non-government school education providers nominate an exact location in their in-principle application would address this issue, (ie. the community land or the existing site under consideration or being negotiated).

For new suburbs/regions being planned in the ACT, the Planning and Land Authority (PLA) and the Land Development Agency (LDA) both have a role in the development, identification and allocation of sites for future community use, which includes schools, and the policy issues relating to these planning issues. The PLA has specific responsibility for ensuring there is broad community consultation and involvement in planning issues and about land use in the Territory.

To assist in the strategic planning for, and allocation of, possible future sites for potential non-government schools, and to allow for a more transparent process, it would be appropriate for the PLA to communicate directly with all non-government education providers, the Education and Training Directorate (ETD) and peak education support bodies, when consultation is occurring around amendments to the Territory Plan, and when new master plans are being consulted on for a particular area.

In the case of applications for acquiring land or existing premises for a new non-government school in a developed area, or for additional year levels or campuses, planning is of a different kind. Factors such as impact on existing school enrolments, demand for the type of school/provision being planned, financial issues and resource utilisation, may need to be considered through a highly participatory consultation process. This more strategic or 'overview planning' of schooling options, ie. the range and diversity of educational provision within a particular region or area of the ACT, (eg. Gungahlin, Belconnen), would be enhanced with greater attention to these issues in the ETD manual.

2. Community Demand

The main issue here was the need to demonstrate in a quantifiable way, an adequate (or minimum) enrolment number to start up a new school that could be validated (AIS, GSEC, NGSEC, P&C, AEU, SOS) and the nature of the evidence/hard data that should be presented to justify an application and/or demonstrate ongoing viability. The AIS supported this view that the current process is about validating community need.

SOS sets out criteria for assessing impact and demand for in-principle approval and registration, and proposes that a demonstration that minimum enrolment levels will be reached within three or four years of the school being established should be adopted (as is currently the requirement in four Australian jurisdictions).

APFACTS supports the current processes but also holds the view that the intended provider must ensure accountability and demonstrate viability and sustainability.

In contrast, CSA maintains there should be no limitations on the rights of parents and others to establish schools, (no matter how small the enrolment), in line with their religious and moral convictions. They draw on both an international rights instruments and the ACT Human Rights Act 2004 to strongly argue their position.

Another issue raised concerned the potential financial impact on existing schools if they lose enrolments due to the establishment of a school within their locality or region or a school with a similar ethos.

If an education provider can demonstrate the proposed or existing school will be/is financially viable with the given number of enrolments, then is it appropriate to set a benchmark? Conversely, given public funding is provided to non-government schools, supporting schools to exist with very small enrolments (eg between 1 and 20 students),

may well be an issue for the wider ACT community to consider, potentially on a number of levels - political, economic, quality of provision - to name a few.

In our judgement however, the viability of a non-government school is ultimately best measured by its capacity to comply with the requirements set out in the legislation – namely *Part 1.2 (7) General Principles of the Act* and *(8) Main Objects of the Act*, and with *Part 4.1 (75) Principles* (applying to non-government schools).

3. Communication/Consultation

CSA (supported by BCC and ASA) are firmly of the view that the requirement to advertise registration applications should be removed.

Conversely, the P&C Council is seeking additional ways to ensure the public is aware of applications and has greater access to them, and there is greater transparency around their assessment. GSEC is of the view that current consultation processes are quite passive in nature, eg printed media, which means interested or potentially impacted parties might only become aware of an application if they happen to buy the newspaper on the right day and see the notice. They put forward the view that a highly active communication/consultation process is required, (eg community meetings, use of latest technology), to ensure wider public awareness and effective community engagement in the process.

The ETD has responded positively to community feedback around this issue by enhancing their communication and access strategies relating to applications for in-principle approval and registration. It would be appropriate for the legislation to be amended to reflect these changes (eg sections 83 (5) and 83 (7)) and the ETD manual similarly updated.

While the P&C Council wants more information, including panel reports, to be made available to the public, the AIS does not support placing a full copy of an application on the Directorate's website due to the potential sensitivity of some information and the possibility of commercial-in-confidence material being included. It may however, be appropriate for schools to post their registration/re-registration panel report on their own school website, as is the practice with annual reports. The ETD manual could be amended to this effect including the proviso that matters of high sensitivity or confidentiality, or pertaining to commercial-in-confidence issues, are deemed to be omissible.

The CEO would like the manual to be amended so that they are formally consulted about applications from other non-government schools as has been the practice in the past. This is a valid point given the establishment of any new school in the ACT is a highly important issue for all education stakeholders. If the peak education bodies - the CEO, AIS, GSEC, NGSEC – were all formally advised about an application for a new non-government school, as a matter of course, each will have the opportunity to seek further

information, consult with their constituents, and make a considered response, and, if needed, seek a formal consultation meeting with representatives of ETD.

4. Panels

While the majority of submissions support the role, thoroughness and value of panels, a significant number are of the view that they must have a broadly representative (balanced) membership, independent of the provider proposing or seeking registration of the new school, and free of any conflict of interest.

Two submissions expressed concern that there was the potential for inconsistency in the deliberations from one panel to another given the membership of panels was not constant. SOS believes that without specified standards for compliance with policies, guidelines etc, there is also the potential for different panels to apply different standards. To address these potential issues, it may be timely for the ETD to review the checklists for registration panels to ensure they are all quite explicit and none are open to interpretation.

Conversely, CSA (supported by BCC and ASA) are of the view that consideration should be given to expanding opportunities for 'self-regulation' within these processes.

Given the support expressed through the majority of the submissions for the panel process, (and the self-regulatory nature of the CEO's re-registration process), as long as the procedures undertaken by panels are: transparent and their findings are evidence-based and able to be validated; there is no over-representation of the school sector or religious body involved; and, the chair of the panel is independent and has no conflict of interest, the composition of a panel should not need to have any further specific requirements placed on it. These conditions could also apply to panels considering proposals for additional Catholic systemic schools or additional levels or campuses for existing systemic schools. It would be appropriate for these issues to be clarified in the ETD manual.

The AIS supports the concept of an additional panel to assist the Minister (after the 60 day consultation process), to consider the application in light of the community comment received, and to provide advice to the Minister to assist her decision-making. However the AIS also expresses some reservation about adding an even greater level of complexity, and no doubt an extra step in the process would be perceived by some as another layer of bureaucracy. This proposal may have some merit however, if it had the effect of raising standards and making the process more rigorous. A small, representative, high level panel, perhaps chaired by a non-aligned independent from one of the universities, would receive the final paperwork from ETD, review the application, clarify any issues raised by the applicant, the panel, ETD officers and/or the community, and provide advice to the Minister.

5. Regulatory Issues

The issue of greater parity of non-government school processes with government school requirements comes through in a number of submissions. (P&C, SOS, GSEC, AEU) These groups are seeking changes to the manual to ensure that during the registration process the same high levels of regulatory scrutiny and rigour that apply to public schools are applied to non-government schools. They are seeking greater clarity for all parties in this area.

The P&C and SOS believe that specifying adequate standards and clearly defined criteria for compliance in areas of policy and programs relating to student safety and welfare, (similar to the public school requirements), will lead to less inconsistency and much greater certainty for both prospective and current students, for the Minister, and for the general public.

It would seem imperative in the current climate in Australia, and at a time when child abuse issues are being investigated by Royal Commissions, that amendments to the ETD manual could be made so that standards, policies and programs around child protection, student welfare and safety and pastoral care are made quite explicit. This might include a requirement for principals and proprietors to declare any prior involvement in a school that has been deregistered or has been under investigation in relation to child welfare issues; (SOS recommendation).

Another potential equity issue relates to how proposals for the establishment of new Catholic systemic schools and the expansion of existing systemic schools, are undertaken. A different set of rules applies to the management of these processes and to the panel procedures to those that apply to other religious-based non-government schools. In the interest of addressing any perceived disparity and partiality, it may be beneficial for representatives of ETD to have discussions with the CEO on this matter.

While the Education Act has enforceable or compulsory requirements around student attendance, participation, education age and information when the school is open, the legislation does not require a school to be open for a minimum number of days per year or a minimum number of hours per week. (SOS) This is curious in some ways because it follows from this omission that a school could be established and then, for example, operate for two days per week or for only three months of the year.

While there may be some value in amending the Education Act from a regulatory perspective to include such a requirement to meet the high expectations of the ACT community regarding quality schooling, and in respect of the General Principles already stated in the legislation, a quick scan of non-government school term dates, as posted on their websites, reveals that the majority are open for students of compulsory age for more than 170 days per year. However for the Minister to be satisfied that schools are giving sufficient time to meet the educational needs of their students, it may be quite appropriate to amend the legislation and the ETD manual to require schools through all processes under review, to specify the number of days per year they will be open.

In light of the issues above, and given the high expectations held by the ACT community that all schools will provide high quality education, fully comply with the legislation and have high standards, and given that re-registration processes currently only need to occur every five years, it may also give greater assurance to the Minister and the community that each non-government school is meeting all regulatory (legislative) requirements, if the principal and chair of the governing body of each non-government school were to sign a certificate of compliance to that effect on an annual basis.

6. Appeal Rights

Currently applicants have the right of appeal if their application is not approved by the Minister. The AEU, P&C Council and SOS however are of the view that the right of appeal should be extended to interested parties (such as those potentially affected by the proposed school) who disagree with the Minister's decision to approve an application. The AIS does not support this proposition nor does CSA who hold the view that if the matter is 'decided on facts', that must be sufficient.

In our view, if the process is quite transparent, and the public is well informed about applications under consideration, then it can be argued that this should be sufficient if the process allows any party who believes they will be affected (if the application is approved), to submit a formal objection (prior to the Minister's decision). The consultation processes need to assure citizens that formal objections can be made, within a specified timeframe, and this should be highlighted in the ETD Manual.

Considerations

1. Planning

1.1 If the **ETD manual** was amended to require organisations to state the specific location of a proposed school or additional campus in their in-principle application, this would provide greater transparency and facilitate more authentic consultation.

1.2 In addition it would be beneficial if the PLA were to communicate directly with interested non-government education providers, ETD and peak education support bodies, when consultation will be held about potential school sites identified in new or revised master plans; and, it would increase transparency, if the LDA were to formally advise other education providers when a non-government school organisation is seeking to acquire a specific block of land to nominate in their in-principle application.

1.3 If the **ETD manual** was amended to provide a more specific focus on 'overview planning' of schooling options, (ie. the capacity for a range and diversity of educational provision within a particular region or area of the ACT), when in-principle and initial registration applications are submitted and during the community consultation process, then more strategic planning would be facilitated.

2. Community Demand

2.1 If the **ETD manual** was amended to expand on the importance of considering the potential enrolment and financial impacts on existing schools with the establishment of new schools, campuses or additional levels, this would assist in evaluating the need for a new facility. Additionally, it may also be beneficial if the manual were to be more specific about the hard, quantifiable evidence required to validate the number of prospective enrolments, the level of community interest, and the longer term enrolment projections provided by applicants applying for in-principle approval and registration.

3. Communication/Consultation

3.1 Communication and openness would be enhanced if the **ETD manual** was to be amended to require schools to post their registration/re-registration panel reports on their own school websites, as is the practice with annual reports, with the proviso that matters of high sensitivity or confidentiality, or those pertaining to commercial-in-confidence issues, are omissible.

3.2 If the recently enhanced ETD communication and public access strategies relating to applications for in-principle approval and registration were included in the **Education Act** and the **ETD manual**, this would provide greater community awareness and confidence about these changes. In addition, if the ETD could also consider other ways of making the communication/consultation processes more 'active', this would also be seen a positive move.

3.3 If the Minister's decision was formally communicated to community members who made written comment on an application for in-principle approval or registration, it may have the effect of enhancing public relations. It may also enhance communication if the

Minister's decision was posted on the ETD website. These **ETD manual** could be amended to reflect these changes if they were implemented.

3.4 It would be appropriate if the **ETD manual** was amended to state that the peak education bodies - the CEO, AIS, GSEC, NGSEC – will all be formally advised about an application for a new non-government school in the ACT, as a matter of course, and that each will have the opportunity to seek further information and, if needed, seek a formal consultation meeting with representatives of ETD.

4. Panels

4.1 It may assist in addressing any perceptions of bias or conflict of interest if the **ETD manual** was made more explicit about panel membership. For example: that there is no over-representation of the school sector or religious body involved; that the chair of the panel is impartial; that the procedures undertaken by panels are transparent and their findings are evidence-based and able to be validated. These conditions could also apply to panels considering proposals for additional Catholic systemic schools or additional levels or campuses for existing systemic schools.

4.2 If an additional panel process was established to assist the Minister (after the 60 day consultation process) to consider an application in light of the community comment received, and to provide advice to the Minister to assist her decision-making, it may have the effect of raising standards and increasing rigour. (For example, a small, high level representative panel, perhaps chaired by a non-aligned independent from one of the universities, would receive the final paperwork from ETD, review the application, clarify any issues raised by the applicant, the panel, ETD officers and/or the community, and provide advice to the Minister.) This new step, if adopted, would need to be written into the **ETD Manual**.

5. Regulatory Issues

5.1 If the **Education Act** and the **ETD manual** were amended to require schools through the in-principle approval process and registration processes, to specify the number of days per year the school will be open for students of compulsory education age, it may assist in satisfying the Minister that schools are giving sufficient time to meet the educational needs of their students and the requirements of the Australian Curriculum.

5.2 The Minister, parents and the wider community may be given greater assurance that schools are safe places for all ACT students, if the **Education Act** and the **ETD manual** were amended to require schools to have in place explicit high standards, policies and programs governing child protection, student welfare and safety and pastoral care; and if principals and proprietors were required to declare any prior involvement in a school that has been deregistered or has been under investigation in relation to child welfare issues.

5.3 The Minister, parents and the wider community may be given greater assurance that each non-government school is fully complying with all regulatory and legislative

requirements¹, if the **Education Act** and the **ETD manual** were amended to require the principal and chair of the governing body of each non-government school to certify on an annual basis that this is the case, (eg using a standard proforma). In doing so, the ongoing viability (including enrolment) of the school would also be affirmed.

6. Appeal Rights

6.1 If a prescribed process for submitting a formal objection (prior to the Minister's decision) was instigated, it may provide the public with greater assurance that a rigorous consultation process is being undertaken and would ensure that potentially affected parties have an opportunity to voice their objection to a proposal within the specified timeframe. This procedure would need to be addressed in the **ETD Manual**.

7. General

7.1 Both the **ETD manual**, and the **MOU with the CEO**, would benefit from scrutiny by the Government Solicitor to ensure absolute consistency with the **Education Act**.

We trust the Minister finds our report on these important issues and the proposals we have put forward of assistance in her deliberations about ways in which the current ACT non-government school registration procedures might be enhanced to achieve greater transparency and clarity.

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¹ In particular, compliance with the following sections of the ACT *Education Act 2004*: Part 1.2 (7) *General Principles of the Act* and (8) *Main Objects of the Act*, and with Part 4.1 (75) *Principles* (applying to non-government schools).