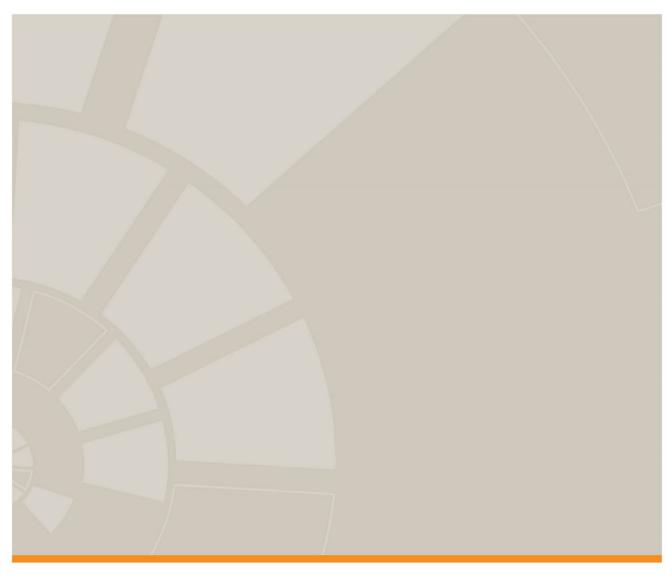# Review Submission

NON-STATE SCHOOLS ACCREDITATION FRAMEWORK

15 May 2023

About Queensland Independent Schools

Community confidence in the independent schooling sector remains strong with more than 140,000 students enrolled in 232 independent schools across Queensland. These schools educate approximately 16 percent of the state's total school-age population and 20 percent of all secondary students.

Independent schools are valued institutions and a pivotal part of Queensland's education system. They are valued schooling choices for families, hubs of human and community connection, places of intellectual, civic and social development, employers and employment generators, education innovators and change-makers.

Independent schools are as unique as the communities they serve and offer parents a choice in the education of their children. Common to all independent schools is their commitment to strong student outcomes, high standards of behaviour, and the welfare and wellbeing of students.

Many independent schools educate international students or specialise in the education of students with disability. There has also been strong growth in the number of Special Assistance Schools for students who have disengaged from mainstream schools, and trade training schools that combine senior year studies with practical vocational education and training.

Over the past five years, enrolments at Queensland independent schools have increased by more than 11 percent. This growth is a clear indication that parents value an independent education and are prepared to invest their after-tax incomes in their child's schooling.

Independent Schools Queensland (ISQ) is the peak body representing Queensland's independent schooling sector. Independent Schools Queensland represents the interests of its member schools, fosters choice in education and protects the autonomy of independent schools. ISQ is a not-for-profit organisation and membership to ISQ is voluntary.

Executive Summary

Independent Schools Queensland values the opportunity to contribute to the Review of the Queensland Non-State Schools Accreditation Framework (Review) announced by the Queensland Minister for Education on 31 October 2022.

Since this initial announcement, ISQ has been consulting extensively with leaders and governing bodies of independent schools to hear about their experiences and understand their views regarding the Accreditation Framework. This consultation process included surveys, roundtable discussions and qualitative interviews held over several months.

This executive summary highlights the main themes and recommendations arising from ISQ's sector consultation. The remainder of this submission explains the issues in more detail and responds to the questions posed in the Submission Guide.

Theme 1: Communication and support

To meet the highest standards of compliance, schools need appropriate regulatory information and support. However, schools report that clear and tailored guidance is currently absent. Written communication by the Non-State Schools Accreditation Board (NSSAB) does not clarify expectations, nor is the language used in correspondence accessible. Further, interactions with the regulator and its representatives are frequently described as officious, sometimes even as intimidating, and as having a demoralising and destructive effect on school staff.

Recommendation: Introduce an object of support

A fourth object should be added to the Accreditation Act which would direct regulatory emphasis towards supporting the non-state schooling sector in meeting its regulatory obligations.

Such an object could be modelled after an object of the ACNC Act: *"To support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector."*

Theme 2: Complaints and investigations

Receiving and investigating complaints has become a core function of NSSAB despite the lack of complaints management provisions in the Accreditation Act. One of the key issues for schools being investigated is the inordinate amount of time and resources necessary to demonstrate compliance, exacerbated by a lack of empowerment to understand specifically what NSSAB expects of them. Even after receiving legal and professional advice, schools cannot be confident that their responses to NSSAB will be accepted, as the issues often lack clarity. As a result, schools report that compliance actions are often not proportionate, with no avenues for efficient and cost-effective resolution in place.

In addition, the complaints process seems to lack an appropriate vetting process that contemplates an appropriate minimum weight of evidence, frequently resulting in vexatious and spurious complaints being pursued. Some schools have even reported that the threat of a NSSAB complaint has been used by disgruntled staff or parents to blackmail or seek revenge against the school.

Recommendation: Introduce a constructive complaints-handling mandate

A complaints-handling mandate for NSSAB should be introduced into the Accreditation Framework, enabling complaints management processes to occur outside of the Board's regular compliance

monitoring and enforcement activities linked to accreditation and government funding eligibility criteria.

This would enable the establishment of processes that are fit for purpose to deal with single-issue complaints at an appropriate level of resourcing for both the regulator and schools.

Further, the mandate should provide regulatory discretion to decide which complaints to investigate, with considerable room for decisions not to pursue complaints. This would promote public resources being used responsibly.

Any future complaints management processes by NSSAB should require that complaint vetting processes use a minimum weight of evidence set at an appropriate level. It should also consider whether the complainant has taken appropriate action to address the grievances following the relevant school's publicly available complaints processes before accepting a complaint.

Theme 3: Inconsistencies

Independent schools have a strong self-interest to meet and exceed regulatory requirements.

A frequent concern by schools is that NSSAB's application of legislation and guidelines is inconsistent. These observations include authorised persons who differ in opinion as to the standards of minimum compliance they expect to find when conducting assessments at schools. However, schools have also reported instances of apparent inconsistencies in decisions by the Board.

Recommendation: Co-create with the sector, clear and accessible guidance materials for areas in which a need to set minimum standards is evident.

The presence of quality guidance materials would hold both schools and the regulator accountable for a consistent application of these standards. The materials should be co-created following a pre-determined process. Reversely, in areas where self-regulation is appropriate, schools should retain the ability to develop their own approaches.

Theme 4: Increasing Coverage

Schools report examples of regulatory creep at micro and macro levels. A broad trend was kicked off with the 2017 Accreditation Regulation which mandated the implementation of certain curricula. Through subsequent years, expectations about how schools could demonstrate compliance with the education criterion significantly increased, culminating in the publication of the *Guidelines for Educational Programs in Non-State Schools.* These are still subjected to unilateral editing by the Board today.

On a smaller level, the sector continues to experience situations in which the Board may make differing assessments of the same policy only months apart, based on increasing expectations that have not been communicated.

Similarly, the number of requests for information in response to review reports submitted by schools as part of the Board's Compliance Review Program has drastically increased in the past two years. Under the assumption that these reports could not have deteriorated to the same extent, increased expectations that have not been communicated must have been established.

Recommendation: Introduce a robust requirement for NSSAB to research, consult, publish and educate before establishing any new compliance standards or expectations.

NSSAB should be obliged to research the impact of proposed changes and review the impact for appropriateness. Such research would assist in deciding whether the proposed change would meet the desired objectives.

Any research should be shared with schools and the sector as opportunities for appropriately rigorous consultation are provided. Beyond a consultation phase, the sector should be provided with opportunities to co-create updated standards, promoting deep and sustainable engagement with them.

Appropriate timelines should be provided for schools to update their processes to align with the new expectations, and the regulator should provide adequate educational opportunities to ensure the sector has a clear understanding of the expectations.

Introduction

In this submission, we intend to describe how the current Queensland Non-State Schools Accreditation Framework operates in practice to assist with the development of amended or new legislation that ensures the Framework reflects a contemporary regulatory environment.

ISQ has prepared this submission to articulate the independent schooling sector's strong support for quality regulation and to describe key issues relating to the current framework, leading to recommendations for regulatory reform that would alleviate them. The submission is based on significant consultation with ISQ's member schools through member surveys, qualitative interviews and roundtable discussions.

ISQ is pleased to see the centrality of students and their families acknowledged as a guiding principle of the Review. It is a fundamental value proposition of all independent schools to provide a quality, safe and supportive educational environment for all students in which they can flourish and develop holistically. The significant growth of the sector across all domains of its diverse membership is a testament to the fact that these objectives can be successfully achieved through diverse expressions of educational paradigms, in small and large schools, urban and remote, based on expressions of faith-based and secular educational philosophies.

Any changes to the regulatory framework should be assessed as to whether they would add to the achievement of the objectives of the Accreditation Act. They should also place a high value on the societal benefits of school diversity which provide genuine parental choice for diverse educational offerings.

Consideration should be given to reforms that ensure that the Accreditation Framework is being administered in line with contemporary standards of good regulation and minimises the regulatory burden of industry participants.

Such a reform agenda is supported by the Queensland Government's Guide to Better Regulation (2019, p. 27), which states:

"Minimising regulatory burden in pursuit of policy objectives depends upon more than good regulatory design. The actions of regulators in how regulations are implemented, administered and enforced plays a significant role in effectively and efficiently achieving policy objectives and determining the level of regulatory burden experienced not just by stakeholders/regulated parties but by regulators themselves."

Response to Review Questions

Community expectations of schools

Question 1: Why is regulation of non-state schools important?

Education is a public good with the government making it compulsory for all school-aged children. This places a clear obligation on the government, through regulation, to give the public confidence that all young people have access to education of an appropriate standard in a safe and secure setting. This public confidence is relevant to the sector as a whole and to individual schools.

The Accreditation Framework in Queensland pursues this purpose chiefly through the Accreditation Act and Regulation. The objects of the Act are:

(a) to uphold the standards of education at non-state schools; and

(b) to maintain public confidence in the operation of non-state schools; and

(c) to foster educational choices in the State.

> *There is broad support for the objects of the Act in the independent schooling sector. At the current time, the objectives of the Act are being achieved: There is a high degree of public confidence in the non-state sector as evidenced by increasing enrolments; standards are high as evidenced by excellent educational outcomes; and there is an extensive and increasing diversity of schools offering genuine educational choice.*

The current achievement of the Act's objects may indicate that the regulatory framework on the whole is meeting its design objectives. Below we will put forward the recommendation to add a fourth objective to the Act.

Question 2. What issues have been raised with your organisation that can shed light on community expectations for non-state schools?

Queensland families value their ability to choose a school for their children that aligns with their values and beliefs, and an environment where they believe their child will achieve their full potential. Since 2006, ISQ has analysed the influences and motivations behind why parents chose independent schools through the *What Parents Want* longitudinal survey.

In the fifth survey conducted in 2021, 3,961 parents with children attending 116 Queensland independent schools shared their views. A key findings report is available on the ISQ website.

The survey continues to demonstrate that parents have a clear vision of what is important to them when choosing a school for their child as indicated by the following responses:

> *I chose this independent school primarily because it is co-ed, has an ethos built on Christian values and the importance of building a strong sense of community. The school effects a mature and respectful approach towards student/teacher relationships and learning that fosters mutual obligation and an appreciation of personal and community responsibility. (What Parents Want Survey ID 49)*
>
> *We chose an independent school based on their academic reputation, learning structure/choices and facilities, their behavioural management and wellbeing programs for the students, their support of students with additional disability needs and especially the school values that align with our family's core values. The school has surpassed all our expectations at the highest level. The learning, support and dedication of the staff throughout the school has been outstanding. (What Parents Want Survey ID 3500)*

The W*hat Parents Want* survey summarises the top 10 reasons why parents choose independent schools:

1. Preparation for student to fulfil potential in later life
2. School seemed right for child's individual needs
3. The high-quality of teachers
4. Encouragement of responsible attitude to school-work
5. Teaching methods/philosophy
6. Reputation of school
7. Good discipline
8. Emphasis placed by school on developing student's sense of community responsibility

9. Range of subjects offered
10. Prospects for school leavers

It is important to highlight that the broad diversity of the independent schooling sector is mirrored in each independent school community's expectations for their particular school. Beyond broadly held expectations that schools should be safe spaces for students and that a school should deliver the educational program that it promises to, a homogenous set of expectations for independent schools does not exist.

A helpful accountability measure prescribed through section 60 of the *Australian Education Regulation 2013* is the requirement for schools to make parent, student and teacher satisfaction with the school publicly available through an annual report. Many schools utilise survey tools to measure the extent to which they continue to meet their school community's expectations; others gather such data using qualitative methods. Such school-level measurements are most directly indicative of the extent to which an individual school meets the expectations of its school community.

Question 3. What contemporary issues should the Non-State Schools Accreditation Framework seek to address?

During the COVID-19 lockdowns, schools in Queensland's independent sector implemented various forms of online/remote learning to provide continuity of education to their students. Many schools discovered significant benefits and opportunities during this time and have since then been considering the creation of hybrid learning options.

The current regulatory framework does not provide enough clarity to give schools the confidence to implement hybrid learning options, including for senior students. Whilst ISQ agrees that non-state schools that are not accredited for distance education should not be providing support or educational programs for students who are at home on an ongoing basis, the sector would welcome assurance through the Accreditation Framework that hybrid delivery of education can be facilitated if it is in the best educational interest of students.

A second contemporary issue is exhibited in the significant increase in Special Assistance Schools which demonstrates that a previously unmet need in the education sector is being filled. These schools require the flexibility to offer educational programs that are relevant to students who are disengaged from mainstream schooling. NSSAB's expectations for educational programs have however had the effect of limiting Special Assistance Schools' ability to cater for the specific needs of these students. The Accreditation Framework therefore should acknowledge that schools and their qualified teachers are best suited to shape their educational offering within the constraints of relevant curricula, noting that the Australian Curriculum itself provides significant professional discretion to meet the needs of students. The discretions of the Australian Curriculum should prescribe the boundaries for schools' education programs rather than further limitations introduced by a state-based regulatory framework.

Lastly, contemporary society increasingly expects that public services, including education, have regard for individuality and diversity rather than offering one-size-fits-all solutions. The community is therefore increasingly seeking to find schools that align with their values, beliefs and educational paradigms. An accreditation framework that limits the expression and implementation of diverse educational paradigms within the education sector would be contrary to this societal trend.

Question 4. How can the Accreditation Framework support a quality Queensland non-state schooling sector?

Independent schools desire to meet the highest standards of compliance and support being held accountable for the fulfilment of their regulatory obligations. In turn, they expect to have access to appropriate information and support to assist them in their ongoing compliance.

If the Accreditation Framework is to support a quality Queensland non-state schooling sector, then the notion of support must be embedded within the framework. The three current objects of the *Education (Accreditation of Non-State Schools) Act 2017* (Accreditation Act) do not mention such support. Therefore, the first step should be to add an object of support, directing regulatory emphasis towards supporting the non-state schooling sector in meeting its regulatory obligations.

Such an object could be modelled after an object of the ACNC Act: *"To support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector."*

If such an object would exist for the regulation of the non-state schooling sector, NSSAB would be encouraged to provide more clarity, more advice, and more emphasis on working with schools to mutually agree on pathways to enhance compliance.

It might also encourage the Board to increase its regular engagement with the sector by facilitating listening activities with schools in all Queensland geographic areas.

A supportive posture could also lead to an increased readiness of NSSAB to work in close collaboration with school representative bodies.

This would elevate the proactive nature of NSSAB's work, where compliance issues are prevented through information, advice, and capacity-building rather than through an increased number of compliance checks.

One element of the Accreditation Framework that currently supports the independent schooling sector is the Board's compliance review program which was initially designed in 2001 to provide an element of self-regulation with the added rigour of external validation.

Whilst schools acknowledge the resource intensity of this process, they believe that it provides them with reasonable flexibility to demonstrate how their school's education provision meets the requirements of the Accreditation Framework. In contrast to the inspectorial systems of other jurisdictions, ISQ believes that the current process overall supports a quality Queensland non-state schooling sector by striking the right balance between accountability and flexibility. Some suggestions to improve that process are provided below.

Further, any Accreditation Framework needs to provide suitable clarity on how compliance obligations are to be met and interpreted, and how schools are expected to remediate any compliance issues.

In order to continue to evolve and innovate in response to community expectations, schools need to have the assurance to know the areas in which they can adapt with agility and confidence without running into the risk of regulatory intervention. A good example of this is the way independent schools responded to the crisis of the pandemic. In 2020, regulators communicated that individual schools know best how to respond to disruptions caused by lockdowns and were given significant latitude to adapt. In response, independent schools demonstrated remarkable ingenuity and agility which allowed them to minimise disruption for the benefit of students, while even creating

opportunities to enhance learning. Clarity on the boundaries of discretionary decision-making supports the sector in being innovative and responsive.

Question 5. How can a quality, contemporary Accreditation Framework enable school communities, including students, to have a voice in how schools are run?

Several factors currently enable school communities to have a voice in how schools are run.

Firstly, market accountability drives the need to elevate stakeholder voices to the levels of management and governance. Independent schools provide a strong voice to their communities on how they are run to ensure they meet their community's expectations and enjoy the trust of ongoing enrolments.

Secondly, the legal environment encourages a requirement to listen to stakeholder voices. Directors' and officers' duties at law in Australia require them to act in good faith and the best interests of their organisation. Increasingly, it is recognised that the best interests of an organisation cannot be isolated from the interests of stakeholders, including employees, customers, and the community. Therefore, the diligent fulfilment of fiduciary duties includes listening to stakeholder voices.

Thirdly, the Regulatory Framework for non-state schools includes the already mentioned annual reporting requirement regarding school satisfaction data. In addition, the Accreditation Framework requires schools to have demonstrable school improvement processes informed, for example, by student, parent and staff satisfaction surveys or focus groups.

While these three points demonstrate that an existing framework prompting non-state schools to listen to stakeholder voices, including students, already exists, ISQ is aware that in contrast to some other jurisdictions, Queensland has not yet established a mandate to give effect to the National Principles for Child Safe Organisations (National Principles). These principles include opportunities for children to genuinely participate in decision-making processes around the promotion of child safety and wellbeing.

Protecting students, promoting wellbeing

Question 6. To what extent do you consider the Accreditation Framework aligns with community expectations of non-state schools in relation to safeguarding students?

Broad community expectations of schools as responsible, child-safe organisations are rightfully high, especially in the wake of the Royal Commission into Institutional Responses to Child Sexual Abuse.

The regulatory environment regarding child protection and mandatory reporting in Queensland is extensive and enforced vigorously by the Board. The framework includes the Accreditation Act and Regulation, the *Education (General Provisions) Act 2006*, the *Child Protection Act 1999*, the *Criminal Code Act 1899,* and the *Working with Children (Risk Management and Screening) Act 2000*. The relationship between these acts and regulations is complex and can lead to a tendency to overreport concerns to the relevant authorities.

Independent school communities expect that their schools are places in which appropriate, swift and effective action will be taken if harm or potential harm to students is identified. This includes the expectation of regular training and awareness raising for all staff. Independent schools take their safeguarding responsibilities very seriously as evidenced by nearly 18,000 completions of ISQ's child protection training during 2022.

Question 7. In what way should the Accreditation Framework embed concepts of student health and wellbeing and set associated expectations of non-state schools?

Going beyond requirements to protect children from harm, the National Principles include the concept of wellbeing within the potential scope of regulatory concern. Currently, Queensland independent schools are designing their own wellbeing programs, and these form a significant part of their value proposition. Independent schools demonstrate strong support for the implementation of quality wellbeing practices. If considerations of wellbeing should become part of the Queensland regulatory framework in the future, it should be done in a way that preserves the diversity of current approaches, as these are profoundly embedded within a school's educational philosophy and provide a choice for families.

Question 8. Are there any changes needed to better protect students and promote wellbeing?

The harmonisation or streamlining of child protection obligations would simplify child protection processes in schools, leading to increased confidence in dealing with concerns or incidents of harm.

If the concept of wellbeing were to be introduced through the National Principles, a common framework applicable to the entire education sector would lead to consistency, providing that it would not restrict existing school programs beyond reasonable boundaries.

Setting the standards of education – Expectations of schools

Question 9. How should community expectations of a quality, contemporary non-state schooling sector be reflected in the Accreditation Framework? Are any changes needed?

The range of expectations that community members have for the independent schooling sector is incredibly diverse and in certain ways, they mirror the polarised nature of our society at large. Not even the mere existence of the independent schooling sector is universally accepted by the community; even less so are shared expectations about specific aspects of a school's operations.

Within the independent schooling sector, schools pursue a diverse range of goals and educational philosophies, and they, therefore, attract a diverse range of families. This means that general expectations even from a subset of parents may not be relevant or applicable to all independent schools. As such, any regulatory framework should be flexible enough to accommodate the unique characteristics and expectations of each individual school and allow them to respond with agility to the needs of their students and community, rather than attempting to impose a one-size-fits-all approach.

The Accreditation Framework should therefore consider community expectations only where there is no reasonable divergence of views and where these views can be clearly defined.

In all other areas, the Accreditation Framework should be designed by considering whether the threshold for regulatory intervention is being met. The threshold is not being met if the education sector provides healthy competition and genuine choices for families that effectively drive school improvement, and if the potential risks and harms are minor. On the other hand, it may be met if, despite competition, the market is not providing an adequate level of protection or benefit to students and their families.

Potential risks and harms in relation to child safety are clearly significant enough to warrant regulatory intervention. As such, we support the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse as a reflection of general community expectations.

In relation to "quality" schooling, the current regulatory framework establishes an effective way for families to exercise genuine school choice based on quality indicators. School data including NAPLAN results are displayed on the MySchool website. Other school characteristics are required to be made publicly available through a school's annual report published on its website. The ability of families to choose schools based on these indicators demonstrates that expectations of quality are already subject to effective regulatory obligations and market pressures.

Adding further regulatory requirements around "quality" schooling to the mix could be redundant and potentially burdensome for schools that are already meeting their parents' expectations.

Overall, it is each school community that is most directly impacted by the education provided by their specific school. As such, it is the parents' expectations that should be given the most weight when considering regulatory requirements for independent schools.

When assessing the extent to which a school meets its community's expectations, our surveys show that parents expect the delivery of the type of education promised by the school upon enrolment. Parents expect students to be prepared to fulfil their potential in later life, and that their schools respond with agility when our understanding of this future evolves. A regulatory framework that is by nature backwards looking should be careful not to prevent schools from responding to such evolutions of understanding.

Parents also expect schools to provide the subjects, resources and facilities that have contributed to their enrolment decision. They expect that their school offers a specific set of subjects corresponding to their student cohort and the school's educational aims and philosophies. They do not expect that the small school they have chosen offers the same subject choice that a larger school could.

However, there have been recent instances where NSSAB required schools to have curriculum documentation for subjects the school knew no student would ultimately choose.

Question 10. How can the Accreditation Framework for non-state schools be made sufficiently flexible to adapt to shifting community expectations for standards of education over time?

Both the Accreditation Framework and any associated expectations devised by the Board from time to time should remain set for significant periods, as such stability provides the foundation for a consistent and fair regulatory system. However, change is inevitable and a process of updating these standards should be embedded into the framework.

Regulatory regimes often suffer from regulatory creep whereby their functions and activities over time extend beyond those legislated or envisioned. NSSAB's role in dealing with complaints, as described further below, might be seen as an example of such a situation. It is important to ensure that shifting expectations are channelled through a well-established process to minimise the risk of regulatory creep.

Standards of education relevant to a regulatory framework should only include minimum standards focusing on areas where there is potential for harm or a clear public interest. Areas where a clear indication of the need for minimum standards does not exist should not have such standards prescribed. For example, whether a school provides "breadth, depth and balance of learning" is best decided by the school in conjunction with an external validator, and subject to market forces of

parents enrolling their children. While the intent behind this standard as found in the Accreditation Regulation is supported by independent schools, its application at the level of regulatory enforcement has proven to be extremely problematic and has had the effect of preventing schools from offering contextually relevant learning provisions.

Areas in which a case for minimum standards is not established should be subjected to appropriate models of self-regulation.

Minimum standards should be set so that even small schools can reasonably comply with them, and larger schools should not be expected to implement different standards.

Once a case to modify a minimum standard has been established, NSSAB should be obliged to research the impact of the change and review the impact for appropriateness. Such research would assist in deciding whether the proposed change would meet the desired objectives.

Any research should be shared with schools and the sector as opportunities for appropriately rigorous consultation are provided. Beyond a consultation phase, the sector should be provided with opportunities to co-create updated standards that promote deep and sustainable engagement with them.

Consultation often does not occur in the current system. To provide a recent example, the "Guidelines for educational programs for non-state schools" (Guidelines) were last updated on 6 February 2023, prescribing new expectations on time allocations in Years 9 and 10. ISQ is not aware of any consultation or notification to the sector that may have occurred about this amendment.

Another example is how the Board deems school policies to be compliant. In its role as a peak body, ISQ offers several key policy templates to member schools.

On multiple occasions, NSSAB has deemed a school's policy based on an ISQ template to be non-compliant when previously a policy based on the same template had passed NSSAB's assessment. Between those policy reviews, no consultation or even notification about changes in expectations had occurred.

Once a standard has been finalised, it should then be published through a process of public notification of changes, and importantly made compulsory only after reasonable timeframes and the provision of education and support for the sector to meet the new expectations.

Finally, the desired flexibility of the regulatory framework cannot be achieved with a "command and control" regulatory approach. However, this approach has become the dominant form of regulation. In recent years, an observable shift in NSSAB's risk appetite has elevated more and more areas to be covered by detailed control. If NSSAB is to continue this trend, it will require a significantly increased bureaucracy to manage this workload.

Question 11. To what extent do the government funding eligibility criteria under the Act align with community expectations?

The criteria prescribed in section 10 of the Accreditation Act continue to align with community expectations. Individual governing body members have fiduciary duties under statutory and common law, and these individual duties correspond closely with the funding eligibility criteria of the governing body under the Accreditation Act.

There continues to be an expectation that if a school receives government funding, none of the school's proceeds should be distributed to members outside of an employee or contractual relationship entered at arm's length.

Accrediting non-state schools – expectations and improvements

Question 12. What, if any, changes are required to the scope of the Accreditation Framework?

In relation to the accreditation application and assessment process, the scope of the Accreditation Framework includes the six accreditation criteria prescribed in the Accreditation Regulation, the suitability of the governing body and the government funding eligibility criteria. Applications for accreditation can be made for primary, secondary and special education. The mode of delivery of education includes the binary pair of classroom education and distance education. Special assistance education can be added as an attribute to primary or secondary education. Reviewing the appropriateness of the school site is also included within the scope of the framework.

Independent schools broadly support this scope of the framework. Issues have arisen not from the scope but due to the interpretation of some of the accreditation criteria. Issues with the educational program have been mentioned above. Issues arising from overlapping responsibilities between the regulatory responsibilities of NSSAB and other regulators will be highlighted below.

Question 14. What changes in an accredited school should trigger a further application for accreditation? To what extent should this process differ from a full application?

The current application requirements have the effect that some schools undergo the same comprehensive (in contrast to a limited) assessment process each year for several years in a row without clear justification.

For example, in short succession, a school may need to demonstrate compliance with all obligations of the Accreditation Framework at an establishment phase assessment, an assessment when starting to operate from a new site, then again when making an application to add an attribute to its accreditation (such as Distance Education), and then finally when they are asked to complete the Board's compliance review program.

It could be argued that a comprehensive assessment of all compliance obligations is not necessary for each of these instances; rather, it would be reasonable to require a school to demonstrate its compliance with building and resourcing requirements when starting to operate from a new site; or with educational program requirements when starting new year levels or delivering the curriculum through a new mode.

While the initial assessment of a school and the compliance review program provide suitable opportunities for a holistic and comprehensive review, in other instances it would be reasonable to limit the scope of an assessment to the aspects of accreditation that are actually changing.

Question 15. To what extent do the current requirements for suitability of a governing body meet contemporary standards of education?

The requirement of the governing body to be suitable to take on fiduciary duties of a school is well supported by independent school communities. In addition to the Accreditation Act, legislation governing the conduct of companies and charities includes certain disqualifications from being a company director or a responsible person for a charity.

Question 16. How does the ongoing nature of the accreditation of non-state schools align with community expectations and contemporary accreditation principles?

It is in the public interest to ensure that each school meets adequate standards and therefore, an ongoing renewal process every five years is well supported. It is however a clear community expectation that the ongoing accreditation of a school should be the default position, subject to the school periodically demonstrating its continual meeting of the criteria prescribed in the Accreditation Framework. An automatically lapsing accreditation would assume that the ongoing nature of students' enrolment at their school was in question. This doesn't appear to be a reasonable default position when the vast majority of schools are not only meeting but significantly exceeding the requirements.

ISQ supports a flexible approach to the periodic demonstration of compliance as per sections 170 and 171 of the Act because of the diverse nature of its member schools. Independent schools have successfully implemented these processes over the last twenty years. They are pleased with the improvements that have been achieved as a result of the compliance review program.

The process allows for reviews to be conducted in ways that are fitting for a school's location, clientele, history, experience, goals and aims, parental involvement, recent developments, and future plans.

The inclusion of an external validator in the compliance review process provides an inbuilt accountability mechanism that is appropriate to the sector's regulatory requirements. It has been proven to be effective and cost-efficient.

Any regulatory changes should preserve the flexibility of approach to demonstrate compliance and ensure it continues to be applicable to an industry as diverse as the non-state schooling sector.

Beyond the foundational intent and design of the compliance review program, recent experiences by schools undergoing the program have emerged that provide some cause for concern. The administration of the program by NSSAB and, for the delegated aspects of the program, by its secretariat has increasingly become narrow and bureaucratic, thereby significantly limiting the flexibility of approach that the process is intended to offer. For example, while the Act and the program guidelines provide considerable scope for governing bodies to develop a review plan that is appropriate to its context, in practice, only plans that are the same as, or very similar to, the template plan will be accepted.

Further, the number of requests for further information in response to review reports received has skyrocketed over the past five years by what ISQ estimates to be 5-10 times. Under the reasonable assumption that the quality of review reports has not deteriorated, this is clear evidence of changed regulatory standards with no origin in a changed Accreditation Framework.

Question 17. Commencement of the Act in 2017 streamlined accreditation processes. What, if any, impact have these changes had for the sector?

A significant change in the 2017 Accreditation Framework related to the mandating of the curricula to be used by non-state schools to be compliant with the education program criterion. This represented a major change in the regulatory approach, with the previous provisions requiring schools to have an educational program that had regard to the ages, abilities and aptitudes and development of the school's students. Under the new arrangements, the Australian Curriculum and ACARA recognised curricula were mandated for P – 10, and QCAA recognised curricula for Years 11 and 12.

This raised issues for schools based on different education philosophies such as Steiner and Montessori schools (subsequently resolved), for Special Assistance Schools, but also for mainstream schools in terms of flexibility and innovation in curriculum delivery.

NSSAB's interpretation of the new requirement for educational programs to "promote a breadth, depth and balance of learning appropriate to the phases of development and across an appropriate range of learning experiences" (section 9(1) of the Regulation) proved to be problematic. The current criterion does not provide clarity, is open to wide and varying interpretations and requires schools to offer an unnecessarily broad subject offering in the senior phase of learning although students are already at an age where they can choose to limit their studies to very narrow career pathways.

Other examples of issues that have arisen within the application of the education criterion include the requirement for special assistance schools to offer (and prepare paperwork for) certain electives in Year 10 even if students are not choosing them, or for schools not being allowed to offer school-based subjects in Year 10 transitioning into senior studies curricula unless they could prove that the entirety of the Year 10 Australian Curriculum has been completed.

After a long period of significant uncertainty by schools as to how to be compliant with the requirement to implement the approved curricula, the Guidelines were created to improve clarity. While the provision of such guidance was welcomed, schools continued to experience significant uncertainty, the cause of which were not the Guidelines (although some improvements should be made) but the continuous existence of disagreements in their interpretation.

This demonstrates that regulating the design of educational programs to the extent it is currently being done not only limits genuine educational diversity but also limits the ability of schools to cater for the specific needs of the students in front of them.

While details of the issues surrounding the education criterion go beyond the scope of this submission, they highlight that NSSAB has engaged in the detailed prescription of curriculum since 2017 which has caused a significant detriment to schools' abilities to offer educational programs in alignment with their school community's needs, leading to detrimental outcomes for students.

Maintaining standards through monitoring and compliance

Question 18. What, if any, changes are required to strengthen monitoring and compliance activities and enable a flexible, proactive and risk-based approach to regulation?

Complaints handling is a regulatory area that requires a more flexible approach. Despite there being no provisions in the Act to deal with complaints about schools, this has become a core function of NSSAB. Such a role was never envisioned in the establishment of NSSAB, and the Board did not handle complaints in its early days.

Rising consumerism and increased information about individual rights on the one hand, and political pressure for NSSAB to deal with school issues (particularly those receiving media attention) on the other have contributed to this increased regulatory activity.

As there is no legislative basis for dealing with complaints, NSSAB currently needs to link any incoming complaint to the accreditation criteria to investigate. Since NSSAB has no other avenue to pursue complaints other than by investigating whether a failure to implement the accreditation

criteria has occurred, its complaints handling processes are inflexible and unreasonably burdensome and bureaucratic.

Where there are systemic failures in a school, the school is unlikely to be meeting the accreditation criteria and therefore NSSAB has a justifiable obligation to deal with that school. However, for single-issue complaints, it is questionable whether using compliance activities to deal with complaints is good regulatory practice.

The result of this inflexible approach is that schools are spending an inordinate amount of time and resources to demonstrate compliance. This is exacerbated by a lack of empowerment to understand specifically what NSSAB expects of them.

- Many investigations and ensuing compliance activities take months and sometimes years until being resolved, at times costing schools tens, if not hundreds of thousands of dollars.
- Most of these costs are for legal advice that helps schools to understand the complex legal language of NSSAB's correspondence and the expectations that are being communicated to them in writing. NSSAB's letters are inaccessible and hard to understand even for school leaders with vast experience.
- Even with legal and professional advice, schools cannot be confident that their responses to NSSAB will be accepted, as the issues often lack clarity and definition.
- Considering these compliance costs, schools report that the issues being addressed are often disproportionate, with no avenues for efficient and cost-effective resolution in place.

A second major area of concern relates to how vexatious and spurious complaints are handled. Schools believe that the complaints process lacks a vetting process that requires an appropriate minimum weight of evidence.

One school reports:

We had a recent situation where an employee was terminated for breaches of the Child Protection Policy. They made outrageous complaints to the health department, QCT, NSSAB, QCAA and the media. The complaints were quickly assessed and dismissed as baseless and as an aggressively defamatory act intended to cause harm to our entity. Only NSSAB took up their cause. After extensive and costly processes none of the allegations were proven even remotely truthful, however, the impact on staff of the school was devastating with multiple staff and leaders taking extended leave to recover.

The sheer resources required to deal with minor compliance concerns are increasingly used as a device by disgruntled staff or unhappy parents to blackmail or seek revenge against schools.

Some school leaders are very familiar with statements such as "If you don't give me [...], I will make a complaint to NSSAB that will keep you busy for months" and "You can't treat me like that, I am going to make your life hell with NSSAB".

ISQ, therefore, recommends consideration be given to the introduction of a complaints-handling mandate into the Accreditation Framework, enabling complaints management processes to occur outside of the board's regular compliance monitoring and enforcement activities linked to accreditation and government funding criteria.

This would enable the establishment of processes that are fit for purpose to deal with single-issue complaints at an appropriate level of resourcing for both the regulator and industry participants.

Further, the mandate should provide regulatory discretion to decide which complaints to investigate, with considerable room for decisions not to pursue complaints. This would promote public resources being used responsibly.

The Australian Charities and Not-for-profits Commission (ACNC) is empowered through its Act to establish a regulatory approach conducive to upholding standards while spending resources appropriately. For example, the ACNC clearly states that it is "not resourced to investigate every regulatory concern that is brought to its attention. The ACNC targets its resources in those areas that present the greatest risk to public trust and confidence."[1] Further, it states that "the ACNC does not act in response to all charity-related concerns. It is not our role to run charities."[2]

Similarly, the Australian Securities and Investment Commission (ASIC) states that "we carefully consider how to respond to all potential contraventions of the law, but we cannot undertake a formal investigation of every matter that comes to our attention. Instead, we are selective about the matters we pursue to ensure we use our resources to target misconduct effectively."[3] "Under the laws we administer, we have the discretion to decide whether to take further action on reports of misconduct that we receive."[4]

Apart from the word "*may* give the governing body a notice" (for example in section 62(3)), there is currently nothing in the Act to support NSSAB having discretion about non-pursuance of compliance concerns.

NSSAB's "Policy for managing compliance concerns"[5] states that "the Board must assess each compliance concern and decide on an appropriate course of action. Appropriate actions may include seeking further information, investigation, referral to another agency, or a decision not to progress the concern."

Compared to the regulatory approach statements of ASIC and the ACNC, NSSAB provides itself with significantly less latitude not to pursue complaints.

Any future complaints management processes by NSSAB should require that complaint vetting processes use a minimum weight of evidence set at an appropriate level. It should also consider whether the complainant has taken appropriate action to address the grievances in accordance with the relevant school's publicly available complaints processes before accepting a complaint.

All complaints should be assessed with due diligence. When a complaint is received, it should be subjected to an initial inquiry that establishes whether it presents as a low-risk issue that can be settled quickly and at a low cost to the regulator and the regulated entity.

To facilitate an efficient complaints resolution process at this early stage, a voluntary inquiry pathway should be introduced that allows the regulator at the officer level to make verbal inquiries with the school and the complainant. It should be an express goal at this stage to assist in the resolution of complaints to preserve resources for more significant matters.

Engagement by schools in this process would require confidence that their voluntary collaboration will lead to better outcomes.

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[1] ACNC Regulatory Approach Statement | ACNC
[2] ACNC Regulatory Approach Statement | ACNC
[3] ASIC's approach to enforcement | ASIC
[4] How ASIC deals with reports of misconduct | ASIC
[5] Policy Compliance Concerns | NSSAB

If complaints cannot be resolved efficiently at this initial step, they will then need to be introduced into the formal complaints management process.

The workload of the Board could be improved significantly through the provision of a delegation of the complaints management process to a committee.

Under well-considered terms of reference, such a committee would provide a greater focus on the issue and its resolution rather than being concerned about the ongoing accreditation of a school. The matter would only be forwarded to the Board for further action where a clear case has been established that the school is not complying with accreditation or government funding eligibility criteria.

Question 19. To what extent should information be made publicly available where a school's existing accreditation is being considered, noting the need to strike a balance between public interest and due process?

There are significant problems associated with making details of regulatory action available to the public. Questions about the application of natural justice are instructive.

Information about compliance action made public before the settlement of the issue (potentially at tribunal) prejudices the compliance process and imposes serious and irreversible reputational harm on an organisation.

It carries with it an assumption of guilt and would only be appropriate for matters related to significant safety concerns. For such situations, regulators such as Work Health and Safety Queensland are already equipped with immediate powers to make certain information available.

In addition, any information made public has the potential to lead to confusion and misinterpretation among the general public and the school community, who may not have the expertise to understand the context and implications of the information. The legal language currently used by NSSAB in its correspondence is adding to the likelihood that even minor compliance matters will be perceived as major issues.

Question 20. What level of support should be provided to non-state schools to make sure they implement the accreditation requirements and uphold standards? Should this approach differ for new schools?

Schools currently perceive a significant lack of clear regulatory guidance and support that is accessible and tailored to meet their needs.

Firstly, NSSAB's correspondence with schools does not assist them in understanding and enhancing their compliance with regulatory obligations.

Its correspondence makes very accurate legal statements referencing applicable legislation, but it does not consider the target audience by clarifying expectations in accessible language.

> *One school describes NSSAB's correspondence as a "guess-what-we-are-thinking game that is reflective of a 1970s teaching approach". Other schools describe that they are left having to resort to a "try and guess" approach to responding to NSSAB requests.*

Secondly, schools report significant barriers trying to engage productively with NSSAB by seeking to discuss matters or receive additional information that would assist in enhancing compliance.

> *We heard from several schools that have approached the secretariat for guidance on how to respond to an investigation about not offering the correct range of subjects for a particular year level. The*

only guidance given to them was that their educational program must have "breadth, depth and balance" and that this may look different in each school's context. There was no interest to collaborate with these schools to determine suitable options or pathways towards compliance. This example is indicative of NSSAB's current engagement practices.

Thirdly, schools are concerned about the officious posture taken by NSSAB in its interactions with schools at all levels, from Board correspondence to visits by some authorised persons. One school reflected that "we got the shock of our lives when the authorised person said, 'I usually get sent to schools to shut them down'".

Schools perceive many verbal and written interactions with NSSAB and its representatives as intimidating, noticing the implied threat of loss of accreditation in every letter. As a result, many schools report a demoralising and destructive effect of NSSAB interactions on their staff.

Independent schools are strongly encouraging the regulator to establish education and support activities to assist schools in their compliance journey, for example through the provision of co-created guidance materials, advice services, and capacity-building activities.

Striking the right regulatory balance

Question 22. What, if any, opportunities exist to streamline regulatory and administrative processes, without compromising standards?

A frequent concern by schools is that NSSAB's application of its legislation and guidelines is inconsistent.

The powers of assessors under the Act have been expanded from time to time to incorporate new functions or activities of the Board. The Board relies heavily on the work of assessors who are seen to be independent (for example, as opposed to assessments being undertaken by departmental officers).

However, the nature of the assessor system, and the apparent lack of ongoing professional development for the assessors, negates one of the principles of good regulation in terms of the exercise of bureaucratic discretion. Apart from each assessor having different skills and perspectives, a lack of consistency is one of the challenges of the regulatory processes. One assessor may have a view that a school is compliant in a particular matter, however, another assessor may have a different opinion. There are numerous examples of such situations. This can result in a level of uncertainty for schools as well as fostering an unacceptable level of suspicion in the overall Accreditation Framework.

One governing body operating several schools tells of their experience that exactly the same policy can be reviewed by authorised persons in two separate schools, and one school is required to make alterations while the other school is not.

Inconsistencies are further exemplified by a governing body which successfully operates several sites in Queensland. Having undertaken several new school/campus accreditation processes over a number of years, they experienced significant regulatory issues for only one application. This left them investing an inordinate amount of time, effort and resources on an issue that was, confusingly for them, not mentioned in any prior or following applications.

The importance of powers

Question 24. Are the Board's current powers sufficient to enable it to take strong and immediate action to maintain public confidence when concerns are raised? If not, what areas should be strengthened?

ISQ argues that improved regulation does not require NSSAB to obtain more regulatory powers. It already has sufficient regulatory means to take action where required and has used these powers to appropriate effect in the past.

The Accreditation Framework further acknowledges links to other regulatory authorities through reference to the *Work Health and Safety Act 2011*, various acts dealing with child protection matters and the *Education (Queensland College of Teachers) Act 2005*. The regulators or authorities empowered by these Acts are endowed with significant powers to immediately act on issues of safety or significant concern. Hence, strengthening of powers for NSSAB in these areas would invariably duplicate the powers of those regulators and would therefore not only be unnecessary but also against best practices in regulatory design.

Good governance

Question 25. What improvements could be made to the Board's governance, decision making, administrative and operating arrangements to support a quality, contemporary non-state schooling sector in Queensland?

Representatives of the two non-state schooling sectors have been members of NSSAB since its establishment in 2002. This reflects the original intent of the regulatory regime which was collaborative and "light touch".

This representation has been the subject of consideration by NSSAB and the government in recent years based on perceived conflicts of interest. However, history would indicate that the representatives have handled any direct conflicts of interest professionally and appropriately.

Removal of sector representatives would be a backward step and would challenge the collaborative and consultative nature of the work of NSSAB. The work of NSSAB could in fact be further improved with more Board members who have a deep understanding of the operation of non-state schools and more direct consultation with non-state schools.

Summary

This paper has emphasised the independent school sector's support for effective regulation. It made a case for a changing regulatory posture towards more feedback and support for industry participants. It explains current challenges regarding NSSAB's complaints handling, inconsistencies and an often-confusing increase in regulatory scope. It reflects on principles of effective regulation to make recommendations for regulatory reform.

The paper noted that the current regulatory arrangements for non-state schools in Queensland, introduced in 2002, have generally served the sector and the community well. Overall, the accreditation arrangements have not impacted the continuing growth of the independent sector, its achievement of excellent educational outcomes and importantly, its offering of increasing educational diversity and choice to the Queensland community.

Therefore, at this time there does not appear to be any strong evidence of the need for major structural change. However, significant adjustments to the regulatory approach will be necessary to facilitate a model that meets Queensland government principles of best-practice regulation. Principles we consider applicable to the regulation of the non-state sector in Queensland are described in the appendix.

ISQ welcomes the consultative approach taken by the independent reviewer and is pleased to submit this paper for consideration in the review.

Appendix: Principles of Effective Regulation

It is extremely rare for there to be deliberate non-compliance with accreditation requirements, for example, fraud, in the non-state schooling sector. Schools have a high ethical regard for the requirements of governments, and a genuine desire to utilise their best efforts to meet those requirements. This provides a solid basis for a regulatory environment that is based on best-practice regulation.

Governments have available many different regulatory tools, and they regulate different industries in different ways. Three main approaches to regulation are "command and control," performance-based, and management-based. Each approach has strengths and weaknesses. Selecting the type of regulation to apply to a sector will have major impacts on the targeted institutions and on the potential for success in achieving regulatory goals.

Traditionally, the majority of regulations have taken the form of what is frequently referred to as "command and control" regulation. Under this approach, the regulatory agency sets forth methods, materials, and processes by which the regulated entity must operate.

Command and control regulation, in theory, creates certainty—for the government, the regulated entity, and the public—that a body of experts has carefully developed the safest and most efficient mode of operation for the sector. This type of regulation is relatively easy for the regulator to observe and evaluate, and therefore to determine compliance. However, it can be a highly expensive form of regulation, as well as limiting diversity and stifling innovation.

Where there is a high risk, a "command and control approach" might be applied, whereas, in low-risk situations, institutions might be allowed to self-regulate. Diligently distinguishing areas of high and low risk is an important task to create the regulatory mix appropriate for an industry's risk environment.

Queensland Government Guide to Better Regulation

The Queensland Government has agreed that regulatory processes in the State will be consistent with the Council of Australian Governments (COAG) *Best Practice Principles for Regulation Making* (COAG 2007). Queensland's *Guide to Better Regulation* (2019) identifies several model practices that support the achievement of policy objectives through better interactions between regulators and their stakeholders, resulting in reduced burden/costs for all parties. These practices are consistent with similar principles adopted in other jurisdictions nationally and internationally.

Model practices that have a strong application for the regulation of the non-state schooling sector are as follows:

Model practice 1: Ensure Regulatory Activity is Proportionate to Risk and Minimises Unnecessary Burden.

- a proportionate approach is applied to compliance activities, engagement and regulatory enforcement actions
- regulators do not unnecessarily impose on regulated entities
- regulatory approaches are updated and informed by intelligence gathering so that effort is focused towards risk.

Model practice 2: Consult and Engage Meaningfully with Stakeholders.

- formal and informal consultation and engagement mechanisms are in place to allow for the full range of stakeholder input and Government decision-making circumstances
- engagement is undertaken in ways that help regulators develop a genuine understanding of the operating environment of regulated entities
- cooperative and collaborative relationships are established with stakeholders, including other regulators, to promote trust and improve the efficiency and effectiveness of the regulatory framework.

Model practice 3: Provide Appropriate Information and Support to Assist Compliance.

- clear and timely guidance and support are accessible to stakeholders and tailored to meet the needs of the target audience
- advice is consistent and, where appropriate, decisions are communicated in a manner that clearly articulates what is required to achieve compliance
- where appropriate, regulatory approaches are tailored to ensure compliance activities do not disproportionately burden particular stakeholders (e.g. small business) or require specialist advice.

Model practice 5: Be Transparent and Accountable in Actions.

- where appropriate, regulatory frameworks and timeframes for making regulatory decisions are published to provide certainty to stakeholders
- decisions are provided in a timely manner, clearly articulating expectations and the underlying reasons for decisions
- indicators of regulator performance are publicly available.

ACNC Regulatory Model

The Australian Charities and Not-for-profit Commission (ACNC) uses another helpful regulatory approach that should be considered. Its regulatory approach statement describes an intervention pyramid by which most effort is focused on education, escalated to more interventionist sanctions proportionate to risk and the responsiveness of charities when problems arise.

Relevant excerpts from the ACNC Regulatory Approach Statement are as follows:

The ACNC's compliance actions are proportionate to the problems we seek to address.

Much of our work involves preventing problems by providing information, support and guidance to help charities stay on track. This is reflected in the pyramid's wide base encompassing educating and informing the charitable sector. Where possible, we work collaboratively with charities to address concerns.

This means that where charities have minor problems in complying with the ACNC Act or Regulation, we will seek to work with them to address the minor problem and get the charity back on track.

Pyramid (from bottom to top):

(a)   Education and support (guidance materials, advice services, education, capacity building, supporting sector initiatives such as forums and excellence awards, reporting reminder letters)

(b)   Assisted compliance (letters and phone calls to discuss compliance concerns, regulatory advice, agreed actions to ensure compliance, overdue reporting letters)

(c)   Proactive compliance (investigations, use of information gathering and monitoring powers, warning, overdue statements of charity register)

(d)   Graduated and proportionate sanctions (enforceable undertakings, compliance agreements, directions, injunctions, suspension or removal of responsible persons, penalty notices)

   (e)   *Revocation*

Engagement with sector

"We have a <u>stakeholder engagement framework</u>*, which includes staging regular consultative forums. We work closely with peak bodies, advisors and other key stakeholders. We deliver educational material through multiple channels, often delivered in partnership with peak bodies, to help charities comply with the ACNC Act.*

We believe that maintaining meaningful, professional working relationships with our stakeholders will enable us to achieve better regulatory outcomes.

Stakeholder engagement creates a feedback loop that supports continuous improvement. Stakeholders help us communicate what the regulations are and what people should do to comply. Listening to stakeholders ensures that decisions can be made in an informed way and helps to validate or question any underlying assumptions and identify potential unintended consequences. Genuine engagement builds understanding and commitment to the successful implementation of a policy."

Independent Schools
Queensland

choice & diversity