Government Funding for Non-State Schools in Queensland: The Education (Accreditation of Non-State Schools) Bill 2001

On 7 August 2001, the Minister for Education, Hon AM Bligh MP, introduced the Education (Accreditation of Non-State Schools) Bill into the Queensland Legislative Assembly. The primary objectives of the Bill are to establish a new legislative scheme whose regulatory regime will apply to all non-State schools, and under which applications for accreditation, and for government funding, will be assessed against transparent criteria set out in the Bill or prescribed by regulation. The Bill also establishes a system of accountability to ensure that funding decisions are based on accurate data, and to provide for formal certification by schools that funding received has been expended in accordance with the purposes granted. This Research Brief provides background statistics and other information on the non-government school sector in Australia and focuses on those provisions of the Bill dealing with government funding of non-State schools. An accompanying Brief (RBR 21/01) deals with Accreditation of Non-State Schools.

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1 INTRODUCTION

On 7 August 2001, the Minister for Education, Hon AM Bligh MP, introduced the Education (Accreditation of Non-State Schools) Bill into the Queensland Legislative Assembly. The primary objectives of the Bill are to establish a new legislative scheme whose regulatory regime will apply to all non-State schools, and under which applications for accreditation, and for government funding, will be assessed against transparent criteria set out in the Bill or prescribed by regulation. The Bill also establishes a system of accountability to ensure that funding decisions are based on accurate data, and to provide for formal certification by schools that funding received has been expended in accordance with the purposes granted. This Research Brief provides statistics on the non-government school sector in Australia, outlines the historical background to non-government schooling, and focuses on those provisions of the Bill dealing with government funding of non-State schools, while Research Brief 21/01 by Nicolee Dixon discusses the proposed arrangements for accreditation of non-State schools.

2 THE NON-STATE SCHOOL SECTOR IN AUSTRALIA

According to Australian Bureau of Statistics (ABS) figures, of the 9,595 schools in Australia at August 2000, 6,961 (73%) were government schools and 2,634 (27%) were non-government schools. The number of full-time students attending schools in 2000 was 3,247,425. Of these, 69% (2,248,287) attended government schools and 31% (999,138) attended non-government schools. Historically, the figures suggest what has been described as “a steady but constant drift of enrolments away from the government sector to the non-government sector”. According to McIntosh, in 1978, 21.2% of full-time students were enrolled in non-government

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1 Hon AM Bligh MP, Education (Accreditation of Non-State Schools) Bill 2001 (Qld), Second Reading Speech, Queensland Parliamentary Debates, pp 2251-2253, at p 2252.


3 Australian Bureau of Statistics. Schools Australia 2000, Cat No 4221.0, p 3.

By 1985, the equivalent figure was 25.8% in 1997 the figure was 29.7%. The number of full-time students attending government schools in 2000 increased by 613 (0.02%) from 1999 figures, while the number of full-time students attending non-government schools increased by 20,162 (2.1%).

For Queensland, in 2000, there were 1,718 schools, of which 1,297 (75.5%) were government schools and 421 (24.5%) were non-government schools. Of the 602,902 full-time students enrolled in schools in Queensland in 2000, 430,402 (71.4%) were enrolled at government schools and 172,510 (28.6%) were enrolled at non-government schools.

The school sector in Australia has traditionally comprised three main groups; Government schools, Catholic schools, and other non-government schools not affiliated with the Catholic church. Of the non-government non-Catholic schools, approximately 2/3 are affiliated with Protestant churches, and about 1/3 are non-denominational. In Queensland, in 2000, of the 421 non-government schools, 270 (64.1%) were Catholic schools, Anglican schools comprised the next largest distinct proportion (22 or 5.2%); the remaining 129 schools were classified together under the heading “other”. Kelley and Evans suggest that the reasons for choosing to enrol one’s child in a non-government school relate to factors such as religious beliefs (particularly for Catholic schools and some denominational private schools), and perceived advantages relating to educational standards, and discipline and order.

3 FUNDING FOR NON-STATE SCHOOLS

From an historical viewpoint, it is only in relatively recent decades that direct funding has been directed towards both government and non-government schools. In the 1870s and 1880s, most of the Australian colonies enacted legislation

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5 McIntosh, p 2.
7 Australian Bureau of Statistics. Schools Australia 2000, Cat No 4221.0, p 3.
8 Australian Bureau of Statistics. Schools Australia 2000, Cat No 4221.0, p 11.
10 Australian Bureau of Statistics. Schools Australia 2000, Cat No 4221.0, p 12.
11 Kelley and Evans, p 1.
effectively excluding the non–government sector from public funding and establishing the tradition that government funding should be directed only to free and secular government schools. However, in the 1950s and 1960s, there was a rapid expansion in school enrolments which State governments found it increasingly difficult to adequately resource. As well, the Catholic school system, which comprised the pre-dominant non-government sector, was experiencing overcrowding, inadequate buildings and a lack of properly trained teachers. As a result of these pressures, the view began to form that the Commonwealth should assist with the shortfall in funding, to both government and non-government schools.

The 1950s saw the Commonwealth provide some limited support to non-government schools in the form of allowing school fees and gifts to school building funds as tax deductions. However, direct support was not provided until the 1960s. In 1964, direct Commonwealth government funding was provided for government and non-government schools under the *States Grants (Science Laboratories and Technical Training) Act 1964*, which enabled funding to be made available for science laboratories and equipment in secondary schools.

Under current arrangements, non-government schools receive funding from both Commonwealth and State governments, with the balance coming from private sources, primarily fees. The Commonwealth Government comprises the major partner, with the State contribution fluctuating between 15-30% of schools’ total income.

### 3.1 Commonwealth Funding

The *States Grants (Primary and Secondary Education Assistance) Act 2000* (Cth) grants financial assistance to the States for 2001 to 2004 for primary and secondary education for government and non-government schools, introduces per capita establishment grants to new non-State schools, and incorporates new socio-economic status (SES) funding arrangements for non-government school students which replace the former funding arrangements calculated on the Education

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12 McIntosh, pp 4-5.


14 s 75.
Resources Index (ERI). The Commonwealth will provide $681.2 million in grants to non-State schools in Queensland in 2001-2002.

3.2 STATE GOVERNMENT FUNDING

In 1999-2000, the total value of Queensland Government funding for non-State schools was $231.501 million. Of this, $193.255 million was for recurrent costs, $27.181 million was for capital projects and $11.065 million was for special initiatives.

The provision of state government funding for non-State schools in Queensland is discussed in more detail in Part 4.1 of this Brief.

4 CURRENT ARRANGEMENTS FOR NON-STATE SCHOOLS IN QUEENSLAND

Currently, under the Education (General Provisions) Act 1989 (Qld), the establishment of a new non-State school involves the following steps:

- planning approval under the planning guidelines applicable for the type of education to be provided by the school: see ss 134A and 134B of the Act. (Under the planning guidelines, applications for planning approval are assessed against criteria including that a proposed school will not have a significant impact on State or non-State schools in its catchment area within the next five years; and that the proposed catchment area is located in an area of population growth or offers a significant element of choice.)

- approval of non-State school status (see s 2(2) & 2A)– the Minister makes this decision

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18 Part 8A (ss 134A and 134B) of the Education (General Provisions) Act 1989 (Qld) was inserted by the Education and Other Legislation Amendment Act 1999 (Qld).

19 See the Planning Guidelines 2000, issued under s 134A of the Education (General Provisions) Act 1989, in particular s 18.
Schools seeking State recurrent funding are required to undertake a third step - categorisation as a school in receipt of subsidy (SIROS) under s 141(1).

After receiving non-State school and school in receipt of subsidy status, schools are eligible to apply for assistance under several categories (recurrent, capital assistance, initiatives funding).

### 4.1 STATE GOVERNMENT FUNDING

#### 4.1.1 State Recurrent Grants

Non-State schools which have been granted School in Receipt of Subsidy (SIROS) approval are eligible for a recurrent annual grant, the purpose of which is to assist in meeting recurrent costs. “School in receipt of subsidy” approval is granted in relation to particular year levels and only enrolments in those year levels attract funding. A school’s grant allocation for the calendar year is based on SIROS approved enrolment as at the end of February and the per student funding rate for the particular year. The per student funding rate is comprised of a base component (which is common to all schools) and a needs component. The per student base component rates for 2001 are:

- Preschool $361
- Primary $722
- Secondary $1,104

The needs component is determined according to the school’s Commonwealth Education Resources Index (ERI), Commonwealth SES (socio-economic status) score, school isolation and the number of students with disabilities, English as a second language, students from isolated areas, Aboriginal and Torres Strait Islander students, and those in receipt of boarding fee concessions. Seventy-five per cent of needs funds are disseminated based on the ERI and SES score, and 25% are distributed using the students needs data.

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22 See s 141, *Education (General Provisions) Act 1989* (Qld).
The Queensland Office of Non-State Schooling collects enrolment data and needs details for each school via the State Census of Non-State Schools which is undertaken in February of each year.

4.1.2 Capital Assistance Scheme

The Capital Assistance Scheme provides state government funds to assist non-State schools to meet costs associated with approved capital projects. The scheme is administered by two Capital Assistance Authorities (CAAs) approved by the Minister for Education (one CAA is nominated by the Queensland Catholic Education Commission and the other is nominated by the Association of Independent Schools of Queensland Inc). Each CAA receives and assesses applications from affiliated schools, makes recommendations to the Minister in relation to the applications, makes payments, monitors the progress of projects and carries out other functions as specified in the *Education (Capital Assistance) Act 1993* (Qld).

Submissions from schools for particular projects are required to be given to the appropriate Capital Assistance Authority by 31 March each year. Enrolment data from the state Census of Non-State Schools, collected in February, are used to distribute the pool of available funds between the two Capital Assistance Authorities.

4.1.3 Initiatives Funding

Grants in this category assist state schools with funding for particular government initiatives, currently including achieving cooler school environments, implementing curriculum reforms, supporting the education of students with disabilities and assisting their families to meet the cost of transporting the students to non-State schools, and assisting families with bus fares to schools outside the Brisbane Statistical Division.

4.1.4 Grammar Schools Endowment

This is a fixed annual cash grant provided to the eight public grammar schools to assist them with the additional costs associated with the statutory status of these

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23 See the *Education (Capital Assistance) Act 1993* (Qld) and the Education (Capital Assistance) Regulation 1994.

24 as authorised by s 47 of the *Grammar Schools Act 1975* (Qld).
schools under the *Grammar Schools Act 1975* (Qld). While the grammar schools are “universally recognised as belonging to the non-State system” the 1975 Act imposes upon them various accountabilities not required of other non-State schools (eg appointment by the Governor in Council of the members of their Boards of Trustees, audit of the accounts and records of financial transactions of their Boards of Trustees, a requirement for the schools’ Boards of Trustees to furnish the Minister for Education with statements of account for funds kept (eg general, trust, loan). The endowment grant is additional to any non-state recurrent assistance to which these schools may be entitled.

## 5 BACKGROUND TO THE BILL

In 1998, the Queensland Auditor–General, in a report on the review of government grants and subsidies, identified shortcomings in the Department of Education’s procedures for granting approval for non-State schools to operate and for allocating funds, including:

- The absence of clear-cut criteria for determining applications for approval to operate
- The absence of mechanisms for monitoring state expenditure on non-state schools
- The absence of any formal requirements for non-state schools to account for their expenditure of state funds.

In relation to the appraisal of non-State school and “school in receipt of subsidy” applications, the Auditor-General’s report stated as follows:

> Non-State school and SIROS status applications are appraised at the district level. However, QAO noted that adequate selection criteria and appraisal guidelines had not been developed to ensure consistency of this process. This finding is consistent with the report on the Program Evaluation for the Assistance for Non-State Education Program – 1993 prepared by the Department which highlighted...


26 s 7 *Grammar Schools Act 1975* (Qld).

27 s 34(2) *Grammar Schools Act 1975* (Qld).

28 s 34 (3) *Grammar Schools Act 1975* (Qld).


inconsistencies in the SIROS appraisal process including one stakeholder describing it as ranging from “anything from a cup of tea and a chat, to a full inspection”.

Once non-State schools and SIROS status has been approved, recipients are automatically eligible to receive recurrent assistance based on census data submitted by schools. QAO was advised that this data is not independently verified by the Department.

For capital assistance funding, the relevant CAAs [Capital Assistance Authorities] are responsible for appraising all applications. QAO was unable to assess this process as the Department advised that they do not undertake any on-going monitoring activities in relation to the CAAs appraisal of capital grants.31

As regards the approval and making of offers, the Auditor General noted:

A fundamental requirement of effective grant administration is the ability of the Department through the grant funding agreement to protect its interests in ensuring that public money is used for the intended purpose. QAO was advised that no formal funding agreements are entered into for recurrent and interest assistance. In addition, no legislation specifically relating to these forms of assistance exists to enable enforcement of grant conditions.

For capital assistance, section 22(2)(a) of the Education (Capital Assistance) Act 1993 requires the CAAs not to provide funding until a written agreement has been entered into. However, the Department advised that they do not monitor the CAAs to ensure that this process is occurring.32

Finally, in relation to matters of performance monitoring and acquittal of grants, the Auditor-General’s report noted:

…there were no monitoring activities to assess on-going eligibility in relation to non-State school and SIROS status. In addition, for recurrent assistance there were no monitoring activities in place and no performance measures or targets had been established. These findings are consistent with the Report of Working Party on Non-State School Recurrent Funding – June 1993 which commented that once non-State school status is approved, the school is then substantially free of any on-going government review or monitoring of their operations except for the Minister’s power under section 74(1) of the Education (General Provisions) Act 1989 which is not widely used.

QAO also noted that the census data supplied by non-State schools, which forms the basis of recurrent assistance, is not independently verified or tested by the Department. QAO was advised that the census data is checked to similar information provided by non-State schools to the Commonwealth Government.

31 Review of the Administration of Grants and Subsidies, p 100.

For capital assistance, the Department advised that they did not review the processes employed by the CAAs to monitor grant activities. In addition, no performance measures or targets have been established for this assistance.

The Auditor-General’s report recommended that the Department should have in place:

- A system to monitor on-going eligibility for non-State school and SIROS status.
- A strategy for independent verification of annual census data provided by non-State schools (eg perhaps on a rotational basis)
- A strategy to monitor the activities of the Capital Assistance Authorities.

The Auditor-General’s report also recommended that the Department of Education should establish an appropriate cost effective acquittal process for recurrent assistance, after noting that:

... for recurrent assistance, no acquittal procedures have been developed. This is consistent with the findings of the report on the Program Evaluation for the Assistance for Non-State Education Program, 1993. In this report, “clients acknowledged that there were no specific accountability processes in place to account for State funds, and that there needed to be appropriate mechanisms put in place”.

In response to the concerns raised in the Auditor-General’s report, the then Minister for Education, Hon DM Wells MP, commissioned a further review of accreditation and funding arrangements for non-State schools, headed by Professor L Roy Webb, Vice-Chancellor of Griffith University. The recommendations contained in the report of that review committee (the Webb Report), which was developed in consultation with non-State school authorities and the Department of Education, led to the preparation of the Bill. The Webb Report (paragraph 3.19) ultimately recommended that the regulation of entry of new non-State schools should be based on the following principles reproduced from the report as set out below:

33 Review of the Administration of Grants and Subsidies, p 102.

34 Review of the Administration of Grants and Subsidies, p 102.

35 Review of the Administration of Grants and Subsidies, p 103.


37 Education (Accreditation of Non-State Schools) Bill 2001 (Qld), Explanatory Notes, p 4.
1. The system for regulating the entry of non-State schools to the industry should be comprehensive, and apply to all non-State schools, and all individuals or organisations offering or purporting to offer non-State schooling.

2. The system of regulation should support a diversity of schools, and approaches to education and should intrude as little as possible into the operational affairs of schools.

3. The system of regulation should not seek to limit the number of new non-State schools per se, but should seek to ensure that all new schools meet appropriate minimum standards.

4. To demonstrate their capacity to meet published minimum standards, new schools should be subject to a process of accreditation.

5. The criteria for accreditation should relate to the capacity of a proposed school to meet published minimum educational and safety standards. In recognition of the interdependence of funding and quality, information dealing with the capacity of the provider to support the proposed school program with appropriate resources will be considered along with information about educational matters.

6. Only an accredited school may have access to State funding.

7. Eligibility for State funding should be determined separately from accreditation, and should have regard to the capacity of the accredited school to meet a community need, or to provide an alternative educational service to those already available in a community but only in circumstances where its funds are supplemented by State funds.

8. A School which is not eligible for State funds, but is able to meet the standards for accreditation, including those relating to financial viability, without the support of State funds, will be approved to operate.

### 6 A LEGISLATIVE SCHEME – THE WEBB COMMITTEE RECOMMENDATION

The Webb Review Committee stated (paras 8.1 & 8.2):

At present, legislative provisions relating to the approval for non-State schools to operate, and the standards required of them, are set out in the Education (General Provisions) Act 1989, the Education and Other Legislation Amendment Act 1999 Part 8A, the Order in Council guidelines made under the Education (General Provisions) Act 1989 s 2(2) while further policy direction is provided through other
Ministerial direction decisions, including specifying that non-State schools receiving State funding must not be for profit.

... the committee believes that there would be merit in developing a separate piece of legislation, which gives substance to the Government’s ultimate decisions on the accreditation and accountability requirements to apply to non-State schools. The operation of these processes under legislation would provide an explicit and transparent basis for both clients and regulators, as well as a framework for accountability for decisions made under the legislation.

The Education (Accreditation of Non-State Schools) Bill 2001 establishes a new regulatory scheme to apply to all non-State schools in Queensland, and under which:

- A statutory body known as the **Non-State Schools Accreditation Board** is created to assess applications against accreditation criteria to be prescribed in regulation, and to monitor an accredited school’s compliance with those criteria.
- To operate, schools will be required to be accredited or provisionally accredited.
- The **Eligibility for Government Funding Committee** is established as a committee of the Non-State Schools Accreditation Board to assess whether a non-State school is eligible for government funding, according to transparent criteria laid down in the Bill.  

In line with the views of the Webb Review Committee (paras 3.18 & 3.19), the Bill seeks to separate the decision-making processes for determining eligibility for state funding from the processes for determining educational quality standards (as far as is feasible).

The remainder of this Research Brief focuses primarily upon the provisions of the Bill dealing with eligibility for state funding and accounting for funding received, against the context of the conclusions and recommendations of the Webb Report. Where the processes for deciding eligibility for funding overlap with decisions about accreditation, relevant provisions of the Bill are also noted. Research Brief 21/01 deals in detail with those provisions of the Bill pertaining to the proposed new process for accreditation of non-State schools.

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38 *Explanatory Notes*, p 5; Second Reading Speech, p 2252.

39 See the *Explanatory Notes* to the Bill, p 4.
7 KEY PROVISIONS OF THE BILL IN RELATION TO FUNDING

7.1 THE FUNDING COMMITTEE

The Webb Review Committee proposed (para 5.10) that:

... applications for State funding should be considered by a committee, constituted especially for that purpose, and including at least one Board member, a person appointed because of their expertise in demography and planning, and an independent person, together with a representative of each of the Association of Independent Schools of Queensland and the Queensland Catholic Education Commission. The committee would be established as a sub-committee of the Board.

Under the Bill, applications for state government funding are to be considered by the Non-State Schools Eligibility for Government Funding Committee (the Funding Committee). Established under cl 129 of the Bill, the Funding Committee is a committee of the Non-State Schools Accreditation Board: cl 124(2). Under Clause 131, the composition of the membership of the Funding Committee will be as follows:

- One nominee of the Minister for Education (this appointee will be the chairperson of the Funding Committee)
- One nominee of the Minister (this appointee is called the Minister’s consultation committee nominee), nominated after consulting with the Association of Independent Schools of Queensland (AISQ) and the Queensland Catholic Education Commission (QCEC) (Clause 131(2) specifies that this nominee must not be an employee of Education Queensland, someone who works full-time in an accredited school, a director of an accredited school’s governing body, or a member of an entity representing the interests of governing bodies of accredited schools. The person must have the qualifications, experience or standing the Minister considers appropriate to membership of the Funding Committee.)
- One nominee of the chief executive (ie the Director-General of Education Queensland)
- One nominee of AISQ
- One nominee of QCEC
- One nominee of the Board with expertise in demography and town-planning, and whose nomination is agreed to by the Director-General, AISQ and QCEC.

The Board is established by cl 105 of the Bill. Clause 124(1) gives the Board the power to establish Board committees. See Section 4.2 of RBR 21/01.
7.2 FUNCTIONS OF THE FUNDING COMMITTEE

As envisaged by the Webb Review Committee (para 5.11), the Funding Committee appears to be concerned exclusively with the eligibility or non-eligibility of schools for state funding, rather than issues relating to the categories or quantum of funding, which the Review Committee saw as continuing to be determined by negotiation between non-State schools’ authorities and the government. The Committee’s two specific functions are set out in cl 130:

- To assess or reassess the eligibility of a school’s governing body for government funding for the school
- To make recommendations about the above matters for the Minister’s consideration.

7.3 MINISTER’S RESPONSIBILITY

As envisaged by the Webb Review Committee (para 5.10), the Funding Committee’s recommendations are transmitted through the Non-State Schools Accreditation Board to, and determined by, the Minister for Education.

The Bill provides that, as soon as practicable after making a recommendation about an applicant’s eligibility for government funding, the Funding Committee must give its recommendation to the Board (cl 85(1)(c)). The Board, in turn, must give the recommendation to the Minister as soon as practicable after receiving it (cl 85(2)).

Clause 71 of the Bill makes it clear that it is the Minister who is responsible for deciding whether a school’s governing body is eligible for government funding for the school.

7.4 MAKING APPLICATIONS FOR STATE FUNDING

The process for making an application for state funding is set out in Chapter 3, Part 2 (cls 73-74) of the Bill. Requirements relating to public notification of applications are set out in Chapter 3, Part 3 (cls 75-84) of the Bill.

7.4.1 Who may apply

Clause 73 provides that the governing body of an accredited school which is not operated for profit is eligible to apply for government funding for the school: cl 73(1). As explained by the Webb Review Committee at paras 5.4 and 5.5 of its report:
Public funding should only be available to a not-for-profit school. This is not to say that there should be a general prohibition on ‘for-profit’ schools. Indeed, the committee’s proposals would enable such a category of school to exist, such as a school seeking to provide for international students only. It is the committee’s view that such schools should be able to exist, in an environment in which their quality is assured, and in which public funding is not available to them.

Funding should only be available to a school which has gained provisional accreditation.

For the purpose of the Bill, a school will be considered to be “not operated for profit” provided that any profits made from the school’s operation are used entirely to advance the school’s philosophy and aims, as stated in its statement of philosophy and aims: cl 7.

7.4.2 Making an application

Under the Bill, applications are to be made to the Funding Committee, in the approved form: cl 73 (2).

7.4.3 Submissions

The Webb Review Committee envisaged that applications for government funding “would need to be subject to some form of comment or objection process by affected schools” (para 5.12). Clause 79 of the Bill gives any person the right to make a submission about an application (note, however, a submission may only address the eligibility for government funding criteria). Provided the submission is properly made in accordance with the requirements set out in cl 80, the Funding Committee must accept it. The committee has the right to accept a submission even if it is not properly made: cl 80(3). Within 10 business days after the submission period ends, the committee is required to give the applicant for funding copies of all the submissions it has accepted. The applicant must then, within a prescribed time period, (see cl 81(3)) provide the Funding Committee with a statement of the applicant’s response to the submissions: cl 81(2).

Clauses 82(1) & (2) provides that the Funding Committee must allow people to inspect applications, without charge, at the Board’s office during ordinary office hours. Similarly, the applicant, also without imposing a charge, must allow any person to inspect the application during ordinary office hours at the applicant’s registered office or principal place of business: cl 82(3). In both cases, this includes a right to inspect documents accompanying the application: cl 82(4).
Under cl 83, the applicant must supply, without charge, a copy of the application to anyone who requests it; however, this does not extend to supplying a copy of accompanying documentation.

7.5 Determining Applications for State Funding

The Webb Report (paras 5.1 & 5.2) expressed the view that:

... it is the committee’s view that the only consideration which should apply to whether a school can operate or not should be whether its sponsors can establish and sustain a school which meets acceptable minimum standards. Consistent with this approach, the committee has proposed that the current ‘planning approval’ component of the non-State school approval process should be abolished.

It is important, however, to maintain commitment to the original purpose of the planning approval policy, which was to limit the application of scarce State funds to the support of schools which could not otherwise meet a need in a growing community, or provide a significant element of choice. The committee is proposing that the Government continue to implement this policy by using these criteria to determine eligibility for the receipt of State funds. This will mean for example that while a new school may be accredited in an area where there is already adequate provision and adequate choice, it will have to demonstrate its capacity to sustain its operations financially from other sources of funding since it will have difficulty establishing a case for State funding.

7.5.1 Eligibility for government funding criteria

The criteria to be taken into account by the Funding Committee when considering an application for state funding and deciding upon a recommendation are set out in Chapter 3, Part 4 of the Bill. These are discussed in more detail below.

Clause 85(3) of the Bill sets out the criteria to which the Funding Committee is to have regard when considering an application for funding for a school that is not yet in operation, while cl 85(4) specifies the criteria to be taken into account in relation to a school that is already in operation. In both cases, the Funding Committee is directed to have regard to matters of impact, choice, minimum enrolment thresholds, school age population growth and unfilled enrolment capacity. The criteria’s purpose is to ensure that State government funds are directed towards supporting schools which meet a community need. The criteria under cl 85(3) and cl 86 (which expands upon cl 85(3)(a)) are set out in full below. Specifically, in

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41 Explanatory Notes, p 49.
considering an application for State funding for a school that is not yet in operation, the Funding Committee must have regard to:

- The likely impact the school’s operation will have on any other non-State schools or State schools operating in the subject school’s catchment within five years after the school’s student-intake day, and specifically, under cl 86(1) – whether there is likely to be a reduction in enrolments at, a reduction in curriculum offerings at, or a closure of, any of the other non-State schools or State schools within the five year period because of the establishment of the applicant school;

- The extent of religious, philosophical or educational delivery, choice in education that prospective students residing in the school’s catchment area are likely to have with the establishment of the school;

- Whether the anticipated enrolment of students, other than overseas students, at the school is more than the minimum enrolment prescribed by regulation for a school offering the same type of education as that proposed to be offered at the applicant school;

- The projected population of school-age children likely to reside in the school’s catchment area within five years after the school’s student intake day, and

- The extent of unfilled enrolment capacity of any other non-State schools or State schools operating in the school’s catchment area.

7.5.2 Decision by Minister

Under the Bill, when the Minister for Education receives a recommendation about an application for government funding for a school, the Minister must decide whether the applicant is eligible: cl 88(1) & (2).

The Minister is to have regard to both the Funding Committee’s recommendation and the eligibility for government funding criteria. However, the Bill clearly specifies in cl 88(5) that the Minister is not bound by the recommendation.

Clause 89 gives the Minister the power to require further information or documentation which the Minister reasonably requires to decide the application. The requirement must be made in a notice, and the time in which the applicant must comply with the request is to be stated in the notice, and must be at least 30 days.

Should the applicant fail to comply with the request, he or she is taken to have withdrawn the application: cl 89(2).
Where the Minister decides to grant the application, he or she must, as soon as practicable, give both the applicant and the Non-State Schools Accreditation Board notice of the decision: **cl 88(6)**.

Where the Minister’s decision is to refuse the application, he or she must give the applicant an information notice about the decision: **cl 88(7)(a)**. If the application for funding is part of an application for accreditation, the Minister must also give the Board notice of the decision: **cl 88(7)(B)**.

By virtue of **cl 90**, if the Minister fails to decide an application for eligibility for government funding within nine months from when the application was made, this failure is to be taken to be a decision to refuse the application. Under **cl 91**, the nine month period can be extended, with the applicant’s agreement, where the Minister considers that further time is needed to make a decision because of the complexity of the matters requiring consideration in deciding the application.

### 7.5.3 Reviews of decisions

In its report, the Webb Review Committee (para 5.14) proposed that:

> An applicant for State funds who has been unsuccessful would be able to appeal to a Tribunal established for the purpose under the legislation, for a review of the decision. The Tribunal would be able to recommend an alternative decision to the Minister.

The Review Committee recommended that the same Tribunal be used for this purpose as was proposed (at para 4.8) for appeals against accreditation decisions (namely an independent Tribunal, rather than an appeal to the court system).

Chapter 4 of the Bill (**cls 101–104**) provides for reviews of various decisions made under the Bill, including decisions by the Minister to refuse applications for government funding (see **cl 101**). A person who is dissatisfied with the original decision may apply to the Minister for a review of the decision: **cl 101**.

Clause 104 sets out the steps to be followed where a decision made by the Minister is to be reviewed by the Minister. The Minister must consider the material that led to the original decision, the reasons for the original decision, and any other relevant material the Minister allows. The applicant must be given a reasonable opportunity to make written representations to the Minister, including representations about any allowed material, if it affects the Minister’s decision. After reviewing the original decision, the Minister must either confirm or amend it, or substitute another decision. As soon as practicable thereafter, the Minister must give the applicant notice of the decision and, if it is not the decision sought by the applicant, reasons for the decision must also be provided.
7.6 WHERE APPLICANT FOR ACCREDITATION SEeks GOVERNMENT FUNDING

As previously noted, the Bill aims to separate the decision-making processes for determining eligibility for state funding from those for determining educational quality standards. In some cases, however, as the Webb Review Committee noted, the two issues “will inevitably be linked” (para 3.18). As explained by the Webb Review Committee at para 3.18:

In the committee’s view, the primary reason for regulating entry to the industry should be to ensure that all schools meet and preferably exceed acceptable minimum standards.

This outcome will, however, depend, for many applicants, on whether or not they will have access to State funds, and for these applicants, eligibility for State funding and capacity to meet appropriate educational standards will be interdependent.

Accordingly, Clause 17 of the Bill requires that, where an applicant indicates in their application for accreditation that government funding is required for the school, and the Non-State Schools Accreditation Board is satisfied that the school will not be operated for profit, the Board must give the Non-State Schools Eligibility for Government Funding Committee a copy of the application and any accompanying documents. Where an application is supplied to the Funding Committee by the Board under cl 17, Clause 74 operates to automatically deem an applicant for accreditation to be an applicant for government funding. The applicant is taken to have made an application for government funding for the school on the day on which the Board received the application for accreditation: cl 74(4).

Clause 20 provides that, if an applicant indicates in their application for accreditation that government funding is sought, the Board is empowered to make a decision about the school’s provisional accreditation before it receives notice of the Minister’s decision about the application for government funding. However, if the Board intends to refuse provisional accreditation on the basis that the school is not financially viable, it must await the Minister’s decision before making a determination about accreditation. If the Board has not reached a decision about accreditation, but receives notice that the Minister has refused to grant the application for government funding, the Board is not to decide whether to provisionally accredit the school until:

- the end of the period during which an application for review of the decision can be made (if no application for review is made), or
- the day the application for review is decided or otherwise disposed of (if an application for review is made).
7.7 **AN ACCOUNTABILITY SYSTEM FOR FUNDS**

In relation to the issue of accounting for State recurrent funds, the Minister’s Second Reading Speech states:

> In developing a process to meet the obligations under which I must report to the parliament on the use of state recurrent funds for non-state schools, there are two key issues that the bill addresses. One is the reliability of census data reported by schools which forms the basis of the allocation of state funds, and the other is the process for certifying that funds allocated are used for the purpose for which they are intended. In its consideration of these issues, the bill has been developed to make sure that any processes do not increase unreasonably the additional administrative burden placed on schools while still meeting adequate public reporting standards.  

7.7.1 **Data Verification**

Several clauses in the Bill provide for verification by auditors of school survey data.

**Clause 162**’s purpose is to require schools to give information that is used to calculate Government payments to the school and any other information reasonably required by the Board to perform its functions. It provides that the governing body of a school that is accredited, or provisionally accredited and operating, must give the Board school survey data for the day prescribed by regulation. “School survey data” is defined in the Dictionary to the Bill (see Schedule 3 to the Bill) to mean:

- The number of full-time, and part-time, students enrolled at the school, grouped according to the type of education offered at the school
- The number of students enrolled for distance education at the school
- The number of full-time, and part-time, students with a disability enrolled at the school
- Details of the sites from which the schools operate
- Other details about the school as prescribed by regulation.

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42 Hon AM Bligh MP, Education (Accreditation of Non-State Schools) Bill 2001 (Qld), Second Reading Speech, p 2252; see also the Webb Report at paras 7.7-7.11.

43 Education (Accreditation of Non-State Schools) Bill 2001 (Qld), *Explanatory Notes*, p 70.
Clause 138 of the Bill provides that it is an auditor’s function to verify school survey data provided to the Board under cl 162. Auditors are authorised persons for the purposes of the Bill (see the Dictionary: Schedule 3). Under cl 150 an auditor has the power to enter school premises during ordinary office hours after complying with certain requirements set out in cl 151. For the purpose of performing the auditor’s function under the Bill (as described above), the auditor is empowered by cl 152 to:

- Physically verify, for a school offering classroom education, that certain students enrolled for classroom education at the school are attending the school
- For a school offering distance education, physically verify that certain students enrolled for distance education at the school are undertaking the education
- Take an extract or a copy of a document at the premises
- Require the school’s governing body to produce a document or give the auditor information.

As explained in the Explanatory Notes:

The entry of auditors is to ensure that the school is accountable with respect to Government funding. Auditors verify that data provided by the school directly correlates with the amount of taxpayers’ funds paid to the school. The public interest in robust decision-making on appropriate independent evidence, and in accountability where public funds are concerned outweigh the concern relating to the intrusion by the Government on public property.

7.7.2 Acquittal Details

Amendments to the Education (General Provisions) Act 1989 (Qld) provide for an accountability process for state government funds, to be managed by the Non-State Schools Accreditation Board. Clause 214 of the Education (Non-Accreditation of Non-State Schools) Bill 2001 provides that Schedule 1 to the Bill makes consequential amendments to several Acts, among them the Education (General Provisions) Act. Included among these amendments, Part 8A of the 1989 Act (dealing with planning approval guidelines and procedures) is omitted, as these processes are superseded by the 2001 Bill. A proposed new Part 8A (proposed new ss 134A –134I) “Schools in Receipt of Subsidy” is inserted into the Education

44 Education (Accreditation of Non-State Schools) Bill 2001 (Qld), Explanatory Notes, p 9.

45 Hon AM Bligh MP, Education (Accreditation of Non-State Schools) Bill 2001 (Qld), Second Reading Speech, p 2252. The Webb Review Committee (para 7.13) had envisaged that the Board would be authorised to manage this process on the Minister’s behalf.
(General Provisions) Act, under which an accountability scheme for allowances paid by the Minister for Education to non-state schools is set up.

In summary, under the amendments, a non-State school is re-defined to mean a school that is provisionally accredited, or accredited, under the 2001 Bill. Operating non-state schools which are eligible for non-State funding under the Education (Accreditation of Non-State Schools) Bill 2001 are deemed to be “schools in receipt of subsidy”. According to the Explanatory Notes to the Bill, the effect of this is that once a school is classified as a school that is eligible for government funding, no further decision will be required for the Minister to pay allowances to the school under the Education (General Provisions) Act or the Education (Capital Assistance) Act 1993. The Minister will be able to pay allowances to such schools on reasonable conditions the Minister considers appropriate: proposed new s 134A.

Where allowances are paid to a non-State school, the school’s governing body will be required to give the Non-State School’s Accreditation Board allowance acquittal details for the school for the calendar year: proposed new s 134B(2). “Allowance acquittal details”, for a school for a calendar year, means details of how the allowances have been expended during the calendar year by the school’s governing body: proposed new s 134B(5). Allowance acquittal details must be supplied in the approved form within six months after the end of each calendar year. Failure by the governing body or its authorised nominee to comply with these requirements will constitute a ground for stopping payment of any allowances: proposed new 134B(4). A show cause procedure is established (proposed new s 134D-134F). Under proposed new s 134G, if after considering representations made in response to a show cause notice, the Board still believes the ground mentioned in s 134B(4) exists for stopping payment of the allowances, it must make a recommendation (which is to include reasons) that payment be stopped. As soon as practicable after making the recommendation, the Board must give the recommendation to the Minister. Where the Minister receives such a recommendation, he or she must make a decision as to whether payment of the allowances should be stopped. In making the decision, the Minister must have regard to the recommendation, but is not bound by it: proposed new ss 134H(3) & (4).

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46 The existing definition of non-State school is also omitted from s 3 of the Education (Capital Assistance) Act 1993 and replaced with the definition above.

47 Education (Accreditation of Non-State Schools) Bill 2001 (Qld), Explanatory Notes, p 85.

48 s 141, as amended and re-numbered.
Lastly, the ground of non-compliance with the provisions dealing with the provision of allowance acquittal details does not limit the Minister’s discretion to stop payment of allowances for another reason: **proposed new s 134I(1)**.

**Proposed new s 134C** provides that, as soon as practicable after the end of each calendar year, the Non-State Schools Accreditation Board must give the Minister a written report about the allowance acquittal details received by the Board.

### 7.8 COMMENCEMENT

**Clause 2** of the Bill provides that some parts of the Bill are to commence upon assent, whereas others will not commence until 1 January 2002. Among the provisions to commence on assent are those contained in Chapter 5, Parts 1 and 2 which establish the Non-State Schools Eligibility for Public Funding Committee and provide for its membership.

### 7.9 TRANSITIONAL PROVISIONS

**Clause 182** of the Bill provides that where a school is classified or provisionally classified as a school in receipt of subsidy under the Education (General Provisions) Act, it will be taken to be a school whose governing body is eligible for government funding for the same aspects of its operation as under the classification or provisional classification.

The effect of **cl 182(4)** is to allow a six month period during which a school’s governing body can reconstitute itself on a not for profit basis, if it is not so constituted (as schools operated for profit are not eligible for government funding under the Bill).

By virtue of **Clause 183**, where a school has made an application for categorisation as a school in receipt of subsidy under s 141 of the Education (General Provisions) Act and that application has not been decided before the Education (Accreditation of Non-State Schools) Bill 2001 commences (once enacted), then the application is to continue to be decided by the Minister in accordance with the Education (General Provisions) Act.
FIGURE 2: APPROVAL PROCESS FOR NEW NON-STATE SCHOOLS

APPLICATION FOR PROVISIONAL ACCREDITATION

SCHOOLS ACCREDITATION BOARD

ASSESSMENT AGAINST CRITERIA
  - Governance
  - Curriculum
  - Renewal
  - Resources
  - Financial Viability

Seeking Government Funding
  - No
  - Yes

SATISFY ALL CRITERIA?
  - No
  - Yes

No similar application considered for 3 years from date of decision

Provisional Accreditation Approved
  - School Opens
    - 6 months

Final Accreditation Assessment
  - No
  - Yes

Provisional Accreditation may be Extended
  - School Formally Accredited

5 Yearly Renewal

Board Funding Sub-Committee Assesses Eligibility for Public Funding
  - Yes
  - No
APPENDIX B – NEWSPAPER ARTICLE

Title Private schools attract 31% of enrolments
Author Gerard Noon, Education Editor

Private schools continue to attract a far greater share of new students than government schools and are filling their staffrooms with an increasing number of male teachers, according to the Australian Bureau of Statistics.

The latest annual survey of schools shows strong growth in private school enrolments with a rise of 20,000 in 2000, to bring the number of pupils at non-government schools in Australia to 999,000.

Public school numbers remained virtually static with just 600 extra students, to bring total numbers to 2,248,000.

It is the sixth year in a row in which private school numbers have increased by between 16,000 and 20,000 each year during a period of far slower growth for public schools.

Thirty-one per cent of all Australian students now attend private schools - the great majority in Catholic schools - compared with 28 per cent a decade ago.

In NSW, government school student numbers increased by about 16,000 over the decade, while private schools increased their numbers by almost 50,000.

The statistics also confirm the increasing feminisation of the classroom during the past decade, with women comprising two-thirds of teachers in both private and government schools.

However, the decline of male involvement in classrooms has concerned some educationists as providing too few male role models for students.

Although the total number of teachers in NSW government schools rose by almost 5,000 over the past decade to just on 50,000, male teachers in the government system dropped out at an increasing rate.

The ABS survey shows 1,700 fewer male teachers - down to 16,400 - in NSW government schools last year compared with 1990.

Over the same period, male teacher numbers in the smaller NSW non-government sector increased by 1,200 to 7,500. During the same period, 3,500 female teachers joined private school staffrooms, bringing their numbers to 15,000.

The general secretary of the Independent Education Union, Mr Dick Shearman, pointed to the establishment of newer Islamic schools and non-denominational Christian schools in Sydney's north-western Hills district as significant factors in private school growth.

Mr Shearman said his union, which represents teachers in the non-government sector, felt it was important for both males and females to be represented in the classroom.

"We take the view that the teaching profession should not be dominated by either gender," he said.

In the non-government system there was one teacher per 14.8 students in 2000 (it was 14.5 in 1995), while the ratio in government schools was 14.9 (down from 15.3 in 1995).
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