

Education Policy Brief

Govt. Concealing Catholic Schools' Use of Taxpayer Funds

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Summary

Public accountability for the use of taxpayer funding is a fundamental tenet of democratic government. Yet, this principle has long been ignored by Catholic education authorities who refuse to reveal how they distribute government funding amongst their schools despite it being a legislative requirement. Their refusal has been connived at by successive governments that failed to make the Commonwealth Department of Education enforce the legislation. The latest example of this tacit agreement at work is the refusal of the Education Department to fully disclose how Catholic Education Commissions distribute their taxpayer funding.

The Department refused an FOI request for the Block Allocation Reports of the Catholic Education Commissions and education departments in each state and territory. The Australian Education Act requires that school systems distribute funding on a needs-basis that includes a base amount per student and loadings to address school and student disadvantages. Block Allocation Reports are a key mechanism for monitoring whether school systems comply with this requirement. The reports show the payments to each school, including amounts distributed for base funding, disadvantage loadings, administrative costs and centralised expenditure.

After consultation with Catholic Education Commissions, the Department partially exempted each Block Allocation Report from disclosure. It redacted information on the payments for the disadvantage loadings for low socio-economic status, Indigenous, disability and low English language proficiency students. Three Catholic Education Commission reports were not released because they are subject to reviews of the decision to release even redacted versions. As ever, Catholic education authorities are desperate to avoid public scrutiny of what they do with taxpayer funds.

The Department gave two reasons for redacting the Catholic Education Commission reports. It accepted Commission claims that disclosure of the payments would reveal information about the socio-economic composition of schools that could adversely impact on their community standing and their enrolments. It also said that the information would disclose personal information about individuals. The latter reason was also given for redacting information on “prescribed circumstances grants” (which apply to disability students) from the reports of the Victorian, Queensland and Northern Territory education departments.

An application has been lodged with the Office of the Australian Information Commissioner (OAIC) to set aside the decisions because they are wrong. The Department’s decision is based on flimsy reasons which verge on ludicrous in some cases.

In deciding that the release of the information could be reasonably expected to adversely affect schools, the Department mis-interpreted the FOI Act. It failed to establish that providing the payments would, or could reasonably be expected to, **unreasonably** affect schools adversely as required under the Act. Moreover, the Department failed to establish that its expectation that the adverse effect could be reasonably expected is based on reason, as also required by the Act.

The decision also ignores the fact that information about the socio-economic composition of schools, Indigenous enrolments and students with a language background other than English is already in the public domain as it is published on the My School website. The OAIC FOI Guidelines state that where disclosure would result in the release of facts already in the public domain, it does not amount to an unreasonable adverse effect.

Furthermore, it is not possible to draw conclusions about the proportion of low SES and disability students in schools from information on the payments for these loadings because there are different

loadings within each student category. In addition, it is difficult to reach conclusions about the extent of Indigenous enrolments from payments for this loading.

While enrolments of disability students are not available in the My School website, it would be extremely difficult to draw any conclusions about the proportion of disability students in a school from information on the payments for disability students because different loadings apply to different levels of disability as well as for primary and secondary schools. For example, a payment to a primary school of say \$476,000 could indicate 100 disability students at the supplementary support level or 13.5 students at the extensive support level.

The Department's decision also states that release of the information on the payments for the various disadvantage loadings would disclose personal information about individuals. However, the Department failed to establish that disclosure would involve "**unreasonable** disclosure of personal information about any person" as required under the FOI Act.

The FOI request does not ask for disclosure of personal information about any individual let alone an unreasonable disclosure. It requests information on block payments to schools. The payments recorded in the Block Allocation Reports for the student disadvantage loadings and prescribed circumstances grants are not in themselves personal information. They are not personal information about identified individual students or students who could be reasonably identified. They are not made to individual families but form part of the funding pool of schools. They can be used to directly or indirectly support the learning of disadvantaged students.

Block Allocation Reports are also required to include funding retained for administrative and centralized expenditure. The National Audit Office has previously identified large variations in the administrative and centralised costs reported by private school system authorities. However, the redacted reports do not include this information and the Department's decision does not state why it was not provided.

Several reports including two by the National Audit Office in 2009 and 2017, the Gonski report and, recently, the Parliamentary Joint Committee of Public Accounts and Audit have criticised the lack of transparency and accountability about the distribution of taxpayer funding by private school systems. They have all recommended changes by the Department of Education to improve monitoring of the use of government funding and ensure that it is distributed on a needs-basis by school systems.

The Block Allocation Reports so far released confirm that the Department is not adequately monitoring how taxpayer funds are used by public and private school systems. Apart from the redactions to conceal payments for the disadvantage loadings, the Catholic Education Commission reports fail to report total payments to each school or report funding retained for administration and centralised expenditure despite this being a requirement for the Report. The state department reports provide even less information. For the most part, they fail to report the payments for each disadvantage loading. The Western Australian department has never submitted a report and no sanctions have ever been applied.

Full publication of the Block Allocation Reports is an important way to provide greater assurance that school funding is being distributed on a needs-basis. Publication of the payments for the base amount and the student disadvantage loadings is needed not only to hold public and private school systems accountable for how they use taxpayer funding, but also to assure the public that the Commonwealth Department of Education in fulfilling its statutory responsibilities to monitor and report on how school systems use their government funding.

Introduction

In September last year, a request was lodged with the Commonwealth Department of Education under Freedom of Information (FOI) legislation to obtain the most recent Block Allocation Reports by the Catholic Education Commission and departments of education in each state and territory. The request was made by Trevor Cobbold, National Convenor of Save Our Schools.

The purpose of the FOI request was to obtain information about how Catholic education authorities and state departments of education distribute Commonwealth Government funding to their schools. Catholic education authorities have long refused to publish how they distribute taxpayer funding amongst member schools, despite the requirement of the Australian Education Act that school systems should distribute funding on a needs-basis that includes a base per student amount and loadings to address school and student disadvantages.

The Department's decision on the request was provided in early January. It decided that the Catholic Education Commission reports are partially exempt from disclosure as are the reports for the Victorian, Queensland and Northern Territory education departments. It redacted information on the payments for the disadvantage loadings because it said they contain business and personal information. An application has been lodged with the Office of the Australian Information Commissioner for the decision to be set aside and the full reports provided.

In arriving at its decision, the Department consulted with the Catholic Education Commissions in each state and the state Departments of Education about the release of the respective Block Allocation Reports. Under the FOI Act, the Department is required to give organisations that have provided information to the Commonwealth the opportunity to submit that the requested information is exempt under provisions of the Act.

The Catholic Education Commissions objected to the release of the information on the payments for loadings covering disadvantaged student groups because it would allow conclusions to be drawn about the socio-economic status of students attending particular schools and adversely impact the community standing of schools and their enrolments. It also objected that the information would disclose personal information about individuals.

The Department accepted these submissions. Redacted reports for the Catholic Education Commissions in NSW, Queensland, Western Australia, Tasmania and the Northern Territory were provided in February. It appears that the Catholic Education Commissions in Victoria, South Australia and the ACT have sought reviews of the decision to release redacted versions of their reports because these reports have not been released yet.

In addition, full or redacted reports from state education department, except for Western Australia were provided in two stages in January. The Western Australian Department of Education has not provided a report to the Commonwealth Department. Reports by the Victorian, Queensland and Northern Territory departments were redacted because it was claimed that they contained personal information about individuals.

Block Allocation Reports

Under the Australian Education Act school systems and authorities must distribute Commonwealth funding according to a needs-based funding model. The model must include a base amount plus loadings for low SES, Indigenous, disability and low English proficiency students and for school size and location. The Regulation to the Act requires government and non-government school authorities to submit information to the Commonwealth Department of Education on how financial grants were used in accordance with the authority's needs-based funding arrangements.

As part of the financial accountability requirements of the Australian Education Act and Regulation, school systems and other school authorities that operate more than one school are required to submit a Block Allocation Report to the Commonwealth Department. [The Department's User Guide](#) for financial acquittal states that the Block Allocation Report is intended to allow approved authorities that operate more than one school to meet their requirements under the Regulation to report on how funding was distributed to each school. The table to be completed by authorities includes columns for payments made to schools for the base Schooling Resource Standard (SRS) and loadings for low socio-economic status (SES), Indigenous, students with disabilities (SWD), English Language Proficiency (ELP), location and size. It should be noted that the payment information required is for total payments in each category and not per student amounts. Systems are also required to provide the total payments to each school.

Authorities are also required to report on funding retained for administration and centralised expenditure. The Department's user guide states that administrative costs refer to any grant funding that is retained by the system to cover expenditure incurred specifically in relation to the administration of the grant on behalf of the schools in the system. Centralised expenditure refers to any grant funding that is either retained by the system authority or levied back from schools to cover expenditure that is centrally handled on behalf of its schools, such as superannuation, relief teachers, long service leave, etc.

A recent [report by the National Audit Office](#) on school funding noted that the Block Allocation Report is intended to show how funding was distributed to each school, specifying amounts distributed for base funding, loadings, administrative costs and centralised expenditure (para 2.29).

Catholic Education Commission reports

The Department released redacted reports for the Catholic Education Commissions in NSW, Queensland, Western Australia, Tasmania and the Northern Territory. The reports provide information for each affiliated school on the payments for the base SRS and for the location and size loadings. The NSW and Tasmanian reports also provide payments for some unidentified loadings. The payments for the low SES, SWD, Indigenous and ELP loadings are redacted in each report. None of the reports provide the total payments for each school or payments for administrative costs and centralised expenditure.

The Department decided that the loadings payments for each Commission except New South Wales are exempt under Clause 47G(1)(a) of the FOI Act because release of this information would involve an unreasonable disclosure of their commercial and financial affairs that would cause detriment to them and their affiliated schools. The Department accepted the claims of the Commissions that release of the payments for these loadings could harm schools by allowing conclusions to be drawn about their socio-economic status which could adversely impact on their status in the community.

I am satisfied that the release of this information could reasonably be expected to impact decisions by some parents and students with respect to whether to enrol at a particular school and this could reasonably be expected to adversely affect those schools in respect of their lawful business affairs (for example, by a decline in enrolments). [para 15]

I have placed substantial weight on the potential for the release of this information to harm the interests of schools, and therefore the Commissions who run them. [para 20]

The third parties consulted in relation to this request contended that the disclosure of specific loading allocations under the AE Act and payments will allow for conclusions to be drawn about the socio-economic status of students attending particular schools, and could

adversely impact the community standing of those schools and their student enrolments. I place weight on this submission as it demonstrates the potential for the Commissions to be adversely affected by the release of this information. [para 21]

The Department also decided that the information was exempt from release under Clause 45F(1) of the FOI Act because it would involve unreasonable disclosure of personal information about individuals.

State department of education reports

The Department provided copies of the full report for the NSW, South Australian, Tasmanian and ACT departments of education and redacted reports for the Victorian, Queensland and Northern Territory departments. It has not received a report from the Western Australian Department of Education.

The full reports provide little information. The NSW and ACT reports provide payments for an unidentified loading and the total payment for each school. They do not provide the payments for the base SRS or any of the student or school disadvantage loadings. The Tasmanian report provides the payments for the base SRS, an unidentified loading and the total payment for each school. The South Australian report provides the payments for the base SRS and the total payments for all the loadings combined together with the total payment for each school.

The redacted reports show the base SRS payments and total payments for each public school. Payments for what is called “total prescribed circumstances grants” are redacted in the Victorian, Queensland and Northern Territory reports. These payments are for additional funding for SWD as a result of the nationally consistent collection of data on SWD. Payments for low SES, Indigenous, SWD and ELP are redacted in the Northern Territory report. The Department said that these payments were redacted because they contain personal information which is exempt under Clause 45F(1) of the FOI Act.

The Victorian report also provides payments for equity and school-based management. Payments for individual equity categories (low SES, Indigenous, SWD and ELP) and size and location are not provided in the original report (that is, this information was not redacted). The Queensland and Northern Territory reports provide the payments for location and size. The Northern Territory report also provides other payments.

The reasons for not disclosing payments for equity loadings are wrong

As noted above, the Department gave two reasons for redacting payments to Catholic schools relating to low SES, Indigenous, SWD and ELP:

- It could be reasonably expected to impact adversely on schools;
- It would disclose personal information about individuals.

Both reasons given for the decision are incorrect and therefore should be set aside and the requested information provided by the Department.

Adverse impact on schools

There are several grounds to set aside the Department’s decision to redact the payments for the Catholic Education Commissions on the grounds of adverse impact.

First, the Department has mis-interpreted Section 47G(1) of the FOI Act. Its decision states that release of the information “could reasonably be expected to adversely affect those schools in respect of their lawful business affairs (for example, by a decline in enrolments)” [para 15].

However, the relevant clause of the FOI Act states that information is conditionally exempt if disclosure would, or could reasonably be expected to, **unreasonably** affect a business adversely. The key phrase is “unreasonably affect”. [The FOI Guidelines](#) published by the Office of the Australian Information Commissioner (OAIC) state: “The test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect” [para 6.188]. The Department has failed to establish that disclosure would have an unreasonably adverse effect on schools in the manner discussed.

Moreover, the Department’s decision merely asserts that the adverse effect could reasonably be expected. The OAIC’s FOI Guidelines state that the term “could reasonably be expected” refers to “an expectation that is based on reason. Mere assertion or speculative possibility is not enough [para 6.186]. The Department has failed to establish that its expectation is based on reason.

Second, information about the socio-economic composition of individual schools is already in the public domain. The My School website publishes a measure of the socio-educational advantage of each school called the index of community socio-educational advantage (ICSEA). It also publishes the percentage of enrolments in each school by SEA quartiles as well as the number of Indigenous students and students with a Language background other than English. Publication of this information has clearly not dissuaded parents from enrolling their children in Catholic schools.

The OAIC FOI Guidelines state that “where disclosure would result in the release of facts already in the public domain, that disclosure would not amount to an unreasonable adverse effect on business affairs” [para 6.191]. Therefore, the redaction of payments for these groups to protect schools from any community judgement about their student composition is completely unnecessary and does not constitute an unreasonable adverse effect.

While enrolment information about SWD in Catholic schools is not readily available in the public domain, the [ABS Schools Australia](#) shows that about 15% of Catholic school students are SWD and Catholic schools account for approximately 20% of all students. Thus, the significant presence of SWD in Catholic schools does not appear to be deterring parents from enrolling their children in any significant way.

Third, the Department has failed to establish that the release of information about the total payments for the low SES, SWD and Indigenous loadings could have an unreasonable adverse impact on the community standing of schools by allowing conclusions to be drawn about the socio-economic status of students in schools. Indeed, it is not possible to draw conclusions about the proportion of low SES and disability students in schools from information on total payments for these loadings because there are different loadings within each student category. In addition, it is difficult to reach conclusions about the extent of Indigenous enrolments from payments for this loading.

The low SES category is very broad and different loadings are applied within it. The loading amount is based on the percentage of students in the lowest two quartiles of the socio-educational advantage (SEA) index and the loading percentage that applies increases with the proportion of students in each quartile. There is a 15% loading for the first student in the lowest SEA quartile (Q1) increasing up to a maximum of 50% where the concentration of students in Q1 reaches 75%. In the case of the second lowest quartile (Q2), a loading of 7.5% applies for the first student in increasing up to a maximum 37.5% where the concentration of students in Q2 reaches 75%.

As a result, it would be extremely difficult to draw any conclusions about the nature of the SES composition of schools. Moreover, given that the total payments to each school are not provided in

the reports, it is impossible to deduce whether a high or low proportion of students in a school are in the bottom two quartiles of the SEA index.

Similarly, as there are different loadings for three categories of SWD it would be very difficult to draw strong conclusions about the proportion of SWD in each school. There are three levels of additional support provided for SWD – supplementary, substantive and extensive. Each level attracts a different percentage loading which also differs for primary and secondary students. The respective loadings for primary students are 42%, 146% and 312% and 33%, 116% and 248% for secondary students. A payment of say \$476,400 in a primary school could reflect 100 SWD at the supplementary level or only 13.5 at the extensive level.

Drawing conclusions about the low SES and SWD composition of combined schools from the payments for these students is even more difficult because the base payment is different for each school level. A given loading therefore results in different payments for primary and secondary students.

The loading for Indigenous students varies according to the proportion of ATSI students in a school. The loading increases on a sliding scale from 20% of the school's base SRS funding amount for one student to 120% for each student in a school where 100% of students are from Aboriginal or Torres Strait Islander backgrounds. The proportion of Indigenous students in a school can be estimated by relating the payments for Indigenous students to the base payments, but it would require a determined effort as one would have to know the formula for estimating the loading and be able to manipulate it to calculate the number of Indigenous students in a school. While the formula is available in the Education Act, it is not reasonable to assume that members of the public would undertake the complex calculations needed to work out the number of indigenous students, especially when it is available on the My School website.

Fourth, it seems contradictory to consider that these payments are exempt from publication for all Catholic Education Commissions except New South Wales. The Department's decision does not explain why the New South Wales payments are not exempt from disclosure on grounds of adverse impact while the payments for the other Commissions are exempt.

Personal information

The decision to exempt disclosure of the payments for the student disadvantage loadings for the Catholic Education Commissions and the Northern Territory Department of Education and for the prescribed circumstances grants by the Victorian, Queensland and Northern Territory education departments on the grounds that they disclose personal information should also be set aside for the following reasons.

First, the Department's stated reason for exempting disclosure of the payments is that the reports "contains (sic) personal information about individuals other than yourself" [para 27]. Once again, the Department has misinterpreted the terms of the FOI Act. The Act provides that a document is conditionally exempt from disclosure if it would involve "the unreasonable disclosure of personal information about any person". The Department failed to establish that publication of the payments would involve 'unreasonable' disclosure.

Second, the FOI request for the full Block Allocation Reports does not ask for disclosure of personal information about any individual let alone an unreasonable disclosure. It requests information on block payments to schools for each loading category.

The Privacy Act defines 'personal information' as "Information or an opinion about an identified individual, or an individual who is reasonably identifiable". The term covers a broad range of

information, the most relevant to this FOI request being 'sensitive information' which includes information or opinion about an individual's racial or ethnic origin, health, political opinion, religious beliefs, sexual orientation or criminal record, etc.

The payments recorded in the Block Allocation Reports for the student disadvantage loadings and prescribed circumstances grants are not in themselves personal information. They are not personal information about identified individual students or students who could be reasonably identified. They are not made to individual families but form part of the funding pool of schools. There is no requirement for them to be used to provide direct services to individual students eligible for the loadings and may be used for a variety of educational purposes including professional development of teachers, curriculum development, literacy and numeracy and other specialised learning programs, educational materials, off-line programs, lower class sizes, student welfare, etc. Decisions about how the payments are used is a matter for the school leadership.

It may be argued that publication of the payments reveals personal information where there is only one student in a school eligible for the loading or grant. However, this is a tenuous connection in most conceivable circumstances. For example, if there is one student in a school eligible to receive the low SES Q1 loading that student cannot be identified as a low SES Q1 student by publishing the payment. If there is one student with a disability in a school, publication of the payment does not identify the student. Nor does it reveal information about the particular disability of a student who may be known in the school as having a disability. Each of the three SWD loadings cover a range physical, cognitive, sensory and social/emotional conditions and it is not possible to glean the level of adjustment or the nature of the disability from the payments. The payments for the Indigenous and ELP loadings are not instrumental in identifying an Indigenous or ELP student in the school. A single Indigenous student in a school will not be identified by the payment. Similarly, the ELP loading payment of a single ELP student does not identify who the student is or her/his racial or ethnic background.

Administrative costs and centralised expenditure

As noted above, the Department's User Guide for completing Block Allocation Reports requires authorities to report information on funding retained for administration and centralised expenditure. In a [supplementary submission \(No. 1.1, p. 5\)](#) to the inquiry by the Joint Committee of Public Accounts and Audit of the Parliament, the Department stated that the Block Allocation Report includes information on funding retained by approved system authorities for administrative costs and centralised expenditure on behalf of their schools. Yet, the reports provided by the Department fail to provide any information on funding retained for administration and centralised expenditure. The Department's decision does not state why it has not been provided. This information should be disclosed in the reports. The [National Audit Office](#) has previously identified large variation in the administrative and centralised costs reported by private school system authorities.

Complete Block Allocation Reports should be released

It is a fundamental principle of government that the use of taxpayer funds should be transparent, and that government and non-government bodies should be accountable for how they use taxpayer funding. Reporting on the use of funding is necessary to promote effective oversight of public expenditure and ensure compliance with legislation.

Transparency and accountability to ensure public confidence in the education system are key principles of the Australian Education Act. Under the Act, approved school systems must redistribute Commonwealth funding to its member schools according to a needs-based funding model that complies with the needs-based principles established under the Act consisting of a base payment plus loadings for various categories of students and schools. The Act also requires that the needs-

based funding arrangements are publicly available and transparent. As noted above, the Block Allocation Report by system authorities is a key mechanism for the Department to determine whether funding is distributed on a needs-base as required by the legislation.

A report on Australian Government school funding published by the [National Audit Office](#) in 2017 was highly critical of the failure of the Commonwealth Department of Education to adequately ensure that Commonwealth funding of schools was being distributed according to the legislation. The report covered both public and private school systems and concluded:

The arrangements established by the Department of Education and Training to monitor the impact of Australian Government school funding do not provide a sufficient level of assurance that funding has been used in accordance with the legislative framework, in particular the requirement for funding to be distributed on the basis of need. Further, the department has not used available data to effectively monitor the impact of school funding and to provide greater transparency and accountability. [p. 8]

Overall, the arrangements established by the department have not delivered the level of transparency and accountability envisaged under the Act... [pp. 8-9]

The department has not effectively monitored the distribution of funding by approved system authorities to gain assurance that funding is being allocated on a needs-basis, as required by the legislative framework. [p. 9]

In a [submission](#) to the recent inquiry by the Joint Committee of Public Accounts and Audit of the Parliament, the Audit Office noted:

Addressing educational disadvantage through the application of a transparent and accountable needs-based funding model is a key element of the Australian Government's education policy. The department had not monitored and reported on the manner in which funding had been allocated or subsequently redistributed by system authorities effectively. As a result, the department had limited assurance that the funding had been used in accordance with the legislative framework, in particular the requirement for funding to be distributed on the basis of need.

The [Joint Committee](#) tabled its report on 14 February 2019. It was also highly critical of the failure of the Department of Education to effectively monitor how Commonwealth funding was being used by school system authorities. It concluded:

The Committee was strongly of the view that the current monitoring arrangements established by the Department of Education and Training do not provide sufficient assurance that Australian Government school funding is administered in a way that is transparent, accountable and compliant with the Australian Education Act 2013. [p. 2]

It recommended that the Department establish arrangements to provide greater assurance that funding is being distributed on the basis of need.

Other reports have also criticised the lack of transparency and accountability by private school system authorities on how they distribute taxpayer funding to their member schools, including a [performance audit report by the Audit Office in 2009](#) and the [Gonski report](#).

The Block Allocation Reports so far released confirm that the Department is not adequately monitoring how taxpayer funds are used by public and private school systems. Apart from the redactions, the Catholic Education Commission reports fail to report total payments to each school or report funding retained for administration and centralised expenditure despite this being a requirement for the Report.

The state department reports provide even less information. For the most part, they fail to report the payments for each disadvantage loading. According to the National Audit Office report, the Western Australian department has never even submitted a report and no sanctions have been applied. In commenting on the failure of state departments of education to fully report on payments made to schools, the National Audit Office report said that it meant that “the data available to the department to reliably assess compliance and progress against policy objectives has been reduced” [p. 40].

Full publication of the Block Allocation Reports is an important way to provide greater assurance that school funding is being distributed on a needs-basis. Publication of the payments for the base amounts and the equity loadings is needed not only to hold public and private school systems accountable for how they use taxpayer funding, but also to assure the public that the Commonwealth Department of Education is fulfilling its statutory responsibilities to monitor and report on how school systems use their government funding.