

Ms. Joy Burch
Minister for Education and Training
ACT Legislative Assembly
GPO Box 1020
Canberra, ACT 2601

23 May 2013

Dear Minister,

We, the undersigned, request that you establish an open, independent review of the process for the approval and registration of new private schools.

We represent three separate organisations with divergent views and differing constituencies. However on this issue of the need for changes to the process of approving new private schools in the ACT we share similar views.

We note your invitation in the Canberra Times (8 May) to make submissions for changes to the decision-making process relating to in-principle approval of private schools. We also note the comment by the Chief Minister in the Canberra Times (14 May) that she is open to "tightening up the decision-making process". We consider this is necessary because there are gaps in the existing process that undermine public confidence in the integrity of the process.

We are not against private schools per se, but given the current school funding arrangements whereby 55% of total funding for ACT private schools is provided by the taxpayer we believe that there should be a rigorous process for approving new private schools. We believe that the provision of private schools in the ACT should be well-planned to avoid waste and duplication of facilities in both the government and private sectors. While we are recommending a review of the process for approving the registration of new private schools, we believe it is appropriate that the Minister for Education continue to make the final decision on whether a new school should be approved and registered.

We are particularly concerned about aspects of the process that led to in-principle approval being granted to three new schools/campuses in the ACT recently. For example, we find it difficult to understand how a proposed school of 480 enrolments could receive in-principle approval on the basis of two indicative enrolments as happened in the case of the approval of a new campus of Canberra Christian School in Molonglo.

We also consider that these recent decisions have exposed inconsistencies in how applications for in-principle approval of schools are assessed. For example, an application for a new private school campus in north-west Belconnen was rejected by the then Minister for Education in August 2008 on the grounds that there was no evidence to support the level of anticipated enrolments and that the proposed school could undermine the viability of existing schools in Belconnen. However, just four years later in December 2012, in-principle approval was given to another private school in Charnwood on the grounds that it

would not negatively impact on existing schools despite the fact that substantial excess capacity remains in the region and overall population growth in Belconnen is very much below the ACT average.

It also appears inconsistent that a government primary school should be closed in Flynn, only to be replaced by a private primary school about one kilometre away in Charnwood where there are two existing primary schools. This does not seem to be good planning.

We are also concerned that the decisions to give in-principle approval to the three new schools/campuses were not disclosed to the public. In our view, it is unacceptable that the public should not be informed about decisions that have implications for the use of taxpayer funds. We also consider it to be unacceptable that organisations and individuals who respond to official invitations to make comment on applications should not be formally informed of the decisions.

We believe these issues should be addressed by a review of the registration process. There are also other problems that need to be resolved to ensure a fully transparent and objective process. These should also be addressed in a review.

In summary, we consider that there are six major problems to be addressed by a review:

- There are several inadequacies in the process for the public notification and inspection of applications for new schools and the publication of in-principle approval decisions and assessment panel reports on registration applications;
- The absence of formal guidelines or regulations for the Minister for Education to consider in assessing applications for in-principle approval against the criteria set out in the Education Act;
- The lack of an appeal process for interested parties other than the applicant;
- Inadequate specification of standards to meet the registration criteria set out in the Education Act;
- The potential for conflicts of interest in the composition of the registration assessment panels; and
- The potential conflicts of interest involved in contracting out the approval process for Catholic systemic schools to the Catholic Education Office.

These problems are outlined in more detail in the attachment to this letter.

We respectfully request that you establish a review of the registration process for private schools in the ACT and recommend on any changes that should be made. We believe the review should be open and transparent and should be conducted independently of the Government.

We propose that you appoint an independent three-person committee to conduct the review. In order for the committee to be seen to be independent and impartial, we suggest that the appointed members should have no current or recent affiliation with a private school organisation. We suggest that at least two of the members should have experience in education policy. We recommend that the committee conduct a public review that invites

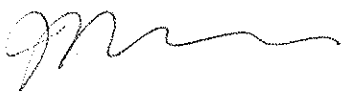
submissions from the public and consults with major stakeholders. We also recommend that its report be made public.

We would be grateful for the opportunity to discuss this proposal with you.

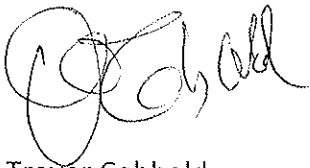
Yours sincerely



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cc. Ms. K. Gallagher, Chief Minister

Attachment

Problems in the Private School Registration Process

There are six major problems with the registration process for ACT private schools which should be addressed by a review:

- There are several inadequacies in the process for the public notification and inspection of applications for new schools and the publication of in-principle approval decisions and assessment panel reports on registration applications;
- The absence of formal guidelines or regulations for the Minister for Education to consider in assessing applications for in-principle approval against the criteria set out in the Education Act;
- The lack of an appeal process for interested parties other than the applicant;
- Inadequate specification of standards to meet the registration criteria set out in the Education Act;
- The appointment and composition of the registration assessment panels; and
- The potential conflict of interest involved in contracting out the approval process for Catholic systemic schools to the Catholic Education Office.

1. Lack of public notification of matters relating to applications and decisions

There are several inadequacies in the existing provisions for public notification of matters relating to applications for new private schools (including new stand alone schools, new campuses of existing schools, or extensions of existing schools to additional levels of education). We consider that these inadequacies have limited the opportunities for public comment and led to lack of transparency about assessment and reporting on applications.

Under the Education Act, the Directorate must seek community comment on applications for in-principle approval by a notice in the Canberra Times. This may restrict the opportunity for comment if interested parties fail to read the notice or become aware of it. Even peak organisations have missed the notices at times, but it is especially difficult for individuals and local organisations to become aware of applications that may affect them (for example, a local school or P&C association). We consider a review of the process should consider other ways of informing the public and interested parties to ensure full opportunity for public comment.

A copy of applications for in-principle approval must be made available “for inspection” at an office of the Education Directorate. However, recent practices by the Directorate have made it difficult for members of the public to record or copy information from these applications in order to make submissions on them. The term “for inspection” has been interpreted narrowly to mean that the Directorate does not assist in making photocopies or electronic copies available and those wishing to inspect applications have been required to physically attend the Directorate office and take notes if they want to record information to assist their comment on the application. This practice has changed recently to provide easier access, but it could also be changed again in the future to limit access. We believe that a review should consider how best to facilitate public access to applications for new private schools and design regulations to ensure this.

Under the Education Act, the Minister must inform the applicant of the decision in writing and state reasons for giving or refusing approval for an application. The Directorate must make the Minister's statement available for public inspection. However, there is no requirement to inform the public or even those who made submissions regarding the application. Recent practice has been not to advise the public nor inform those who made submissions, so that they have been unaware of the Minister's decision. We consider that a review should consider ways in which the public and those making comment on applications should be informed of the Minister's decisions.

Another issue concerns the reports to the Minister by panels assessing applications for the registration of new private schools according to the registration criteria set out in the Education Act. Panels have to prepare a report advising the Minister on the satisfaction or otherwise of various criteria such as the curriculum, nature and content of the education to be offered, safety and welfare of students, and financial viability. These reports must be available for inspection at an office of the Education Directorate and a copy must be provided to interested persons at a reasonable cost. However, there is no requirement for the Directorate to inform the public or interested parties of the report. This obviously limits the opportunity of public scrutiny of decisions by the Minister.

We, therefore, propose that a review of the process for in-principle approval for registration of new private schools should examine ways to ensure reasonable public notification and access to applications, reports and decisions.

2. No public guidelines for assessing the in-principle approval criteria

We submit that guidelines should be formulated to guide the assessment of the impact of new private schools on existing schools and the demand for new schools. The current process is highly unsatisfactory because it is not apparent what factors the Minister considers in assessing applications against the legislative criteria for in-principle approval. The Directorate of Education Manual for the registration of private schools does not provide any guidelines on the information and factors to be considered in assessing impact on existing schools and evidence of demand for new schools.

We believe that the Minister should be required to have regard to a range of factors and information in meeting the in-principle approval criteria. Such guidelines are needed to ensure a proper planning process for the provision of schooling in the ACT. They are also needed to ensure consistency in assessing impact of different proposals and to avoid unnecessary duplication and under-utilisation of existing schools.

The lack of specification of factors to be considered in assessing in-principle approval applications appears to have contributed to conflicting Ministerial decisions about new private schools in the Belconnen region. In August 2008, the then Minister for Education rejected an application for a new private school campus in north-west Belconnen on the grounds that there was no evidence to support the level of anticipated enrolments and that the proposed school could undermine the viability of existing schools in Belconnen. Just four years later, the current Minister for Education gave in-principle approval for another private school in Charnwood on the grounds that it would not negatively impact on existing schools

despite the fact that substantial excess capacity remains in the region and overall population growth in Belconnen is very much below the ACT average.

It also appears inconsistent that a government primary school should be closed in Flynn, only to be replaced by a private primary school about one kilometre away in Charnwood where there are two existing primary schools. This does not seem to indicate good planning.

We propose that a review of the approval process should consider specific factors the Minister should have regard to in determining whether a proposed new private school would undermine the viability of existing government or private schools. Some factors that could be considered by a review include:

- Whether total enrolments in existing schools will be significantly affected;
- The impact on the extent and nature of educational programs and services for students in existing schools;
- The impact on the range of abilities and cultural diversity in existing schools;
- The existing diversity and choice of schooling in the proposed enrolment area of the new school; and,
- Whether the cost of provision of existing schooling services will be significantly affected; and
- Whether a new school would result in unnecessary duplication and under-utilisation of facilities in a region.

We also consider that there is a strong case to specify the information to be required and taken into account in order for the Minister to assess the level of demand in the community. It is entirely unsatisfactory that a proposed school of 480 enrolments should receive in-principle approval on the basis of two indicative enrolments as happened in the case of the approval for a new campus of Canberra Christian School in Molonglo.

We believe that a review of the approval process should consider whether there should be minimum enrolment requirements for private schools as in several other states. We also suggest that a review should consider what evidence applicants should be required to provide on community demand.

Another problem is that applications for in-principle approval do not appear to be required to specify the location of the proposed school. For example, a recent application gave the 'Belconnen area or Gungahlin area' as the likely location of the school. Another application stated that the school would be in Molonglo, even though planning for this region is still incomplete. Such vague locations logically make it very difficult for the Minister to assess the effect on existing schools, the level of demand in the area or the level of interest shown by the proposed school community. Nevertheless, both applications were approved before the specific locations of the schools were known.

3. Limited appeal rights against Ministerial decisions

We believe that there are serious deficiencies in the review of decisions sections of the Education Act. There are appeal rights at all three registration decisions (in-principle, provisional and final registration) of the Minister, but only if the Minister refuses an application and appeals can only be made by the applying body. No appeal is possible

against a decision to grant an application, even if the decision is prima facie seriously in error – for example what constitutes a sufficient level of interest shown by the proposed school community is left entirely at the Minister’s discretion.

We propose that a review of the approval process for new private schools should consider whether other interested parties, such as schools or organisations affected by an in-principle approval, should have the same appeal rights as those whose applications are rejected.

4. Lack of specified standards for the registration of new private schools

We believe that the Directorate’s Manual on the registration of private schools fails to specify adequate standards for compliance and guidelines on some registration criteria. It tends to rely on ensuring that private schools have policies and documents for inspection by registration panels rather than setting standards for compliance. As such, it focuses on processes and information to be provided rather than setting out minimum conditions or standards for in-principle approval and the registration criteria. This general deficiency is very much in evidence in relation to student safety and welfare, but it is also apparent in other areas.

The failure to provide conditions or standards to be met in key areas also creates the potential for different registration panels to use different standards in making their assessments. The absence of standards for the assessment of proposals puts the onus on panels to establish their own explicit standards or, more likely, to adopt implicit standards. Both can result in inconsistency in approach between panels while the use of implicit standards can lead to a lack of public transparency in the registration process.

We propose that a review of the registration process should consider whether more explicit standards and guidelines should be developed to guide the assessment of the registration criteria.

5. Potential conflicts of interest in registration assessment panels

We submit that existing guidelines for registration assessment panels should be reviewed to assure the independence of the panels. The existing guidelines are not adequately specified and allow for potential conflicts of interest.

The ACT Directorate of Education Manual for the registration of government schools states that, with the exception of panels appointed for the re-registration of Catholic schools, panels should consist of a current or recently retired principal of an ACT public school, a departmental finance officer, a range of members from the non-government school sector or the wider educational community, and a member of the ACT Board of Senior School Studies in the case of schools enrolling Year 11 & 12 students.

Our particular concern is that a majority of members appointed to a panel could be associated with the private school sector and that this could compromise the independence and integrity of the panel. The Manual relies on self-declaration of a conflict of interest or a principal of another school alerting the Directorate that a conflict of interest exists for a member of a panel.

In our view, this is not adequate to ensure that there are no conflicts of interest on appointed panels. We submit that the requirements should be tightened to specify that no more than one member of each panel can be an employee or parent in the school sector from which the application is received. No member should be appointed to the panel if they have an interest in the school being reviewed for registration.

We propose that a review of the approval process for new private schools is needed to formulate independent oversight arrangements that are not compromised by potential conflicts of interest.

6. Potential conflicts of interest in panels for the re-registration of Catholic systemic schools

We further submit that the Memorandum of Understanding between the Education and Training Directorate and the Catholic Education Office (CEO) on the self-regulation of re-registration of Catholic systemic schools should be reviewed to consider independent validation of the re-registration process.

Under the current agreement, registration renewal panels are established by the Director of the CEO and approved by a delegate of the Minister. They are required only to include a person from the broader ACT educational community. The current agreement has the potential for major conflicts of interest in the membership of panels. It is possible that a large majority of the members of panels will be associated with the Catholic school system.

We propose that a review of the approval and registration process for new private schools should consider whether a majority of members of the assessment panels appointed by the Director of the Catholic Education Office should be independent of the Catholic school system.