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The AIS leadership team invites you to contact them on (02) 9299 2845 or via email to discuss any of the issues raised in this newsletter or other schooling matters.

ACARA for Sydney

At the MCEETYA meeting of 17th April, the Australian Government announced that the Australian Curriculum, Assessment and Reporting Authority (ACARA) will be located in Sydney. The AIS had previously written to the Deputy Prime Minister to express our support for the proposal put forward by the NSW Minister, Verity Firth, for the authority to be located in Sydney.

This decision is expected to result in a number of benefits for education in NSW, including the capacity for local school education organisations and authorities to engage more easily in professional activities and cooperation with the Authority.

ACARA's primary functions will be to implement the national curriculum and to oversee the national assessment and reporting program. This includes the collection and publication of relevant, nationally comparable information on all schools, including NAPLAN data and associated contextual information.

It will also focus on accountability, school evaluation and resource allocation in schools and work with school authorities nationally across all sectors to identify the factors that are critical to improving school and student performance.

ACARA's proximity should provide the NSW independent sector, and our colleagues in the government and Catholic sectors, with excellent opportunities to engage at the national level in a wide range of curriculum, assessment and reporting matters. While funding and staffing details have not yet been released, it is expected that ACARA will initially have a staff of around 30 people with the possibility of expanding further as it rolls out the Government's agenda.

Building the Education Revolution

The first round of projects under the National School Pride element of the BER program saw almost 200 NSW independent schools approved to receive \$28 million in funding.

The first round of the Primary Schools for the 21st Century (P21) element has seen applications worth \$127 million being forwarded to DEEWR for the approval of the Deputy Prime Minister.

The application and assessment processes have met exceptionally tight timeframes imposed by the Australian Government and the AIS is very grateful to the many people who have assisted in this area.

Considerable work is still to be done to ensure that the timeframes for the subsequent rounds of these programs, and the Science and Language Centres program, are also met.

Welcome to new AIS Staff

We welcome two new staff members to the AIS.

Emma Powys has commenced as a senior industrial adviser in the Employment Relations unit. Emma has a background in law and considerable experience in the employment relations area and will be a valuable addition.

Emma Christie has been recruited to assist with the administration of the Building the Education Revolution (BER) program and will work in that team to assist schools with the BER application and assessment processes.

We are very pleased to have Emma and Emma on board to assist us and schools in these critical areas.

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Dear Colleague,

The very essence of an independent school is the school's right to educate its students within a certain faith or educational philosophy. The school also has the right to define its mission, to set an enrolment policy (within the requirements of relevant laws) and to employ staff based on criteria of excellence and commitment to ethos. Independent schools are managed by a school council or school board which establishes organisational policy, monitors its implementation, manages the finances and appoints the principal or head of school.

It is this independence that has enabled the sector to provide significant leadership in educational innovation, professional learning for teachers, improvement in teacher quality and high quality educational administration.

There is little doubt that over the last decade this independence has been gradually eroded by government prescription and intrusions. However, it is important not to confuse the right to be independent with the responsibility to be accountable for the expenditure of public monies.

There is no doubt that the accountability requirements placed on independent schools over many years are far more exacting than those on other schools. The sector accepts the right of governments which provide public funding, and of parents who pay tuition fees, to a high level of accountability. It does not accept, however, the incremental erosion of its independence.

There are numerous examples of governments' increasing involvement in the operational role of independent schools, but a recent one that is causing serious concerns to many schools is the new Financial Health Assessment Framework (FHAF) that was imposed on non-government schools without proper consultation.

Early in Term 1 this year, non-government schools received correspondence from the Department of Education, Employment and Workplace Relations (DEEWR) advising that the *Schools Assistance Act 2008* requires non-government schools to be financially viable in order to receive Commonwealth funding – a provision supported in principle by the independent school sector.

In order to comply with the legislation the Australian Government decided to use a new Financial Health Assessment Framework for non-government schools to determine the financial viability of each school, whether it is supported by a system or not. This is despite the financial viability of a school essentially being meaningless if it is systemic and is supported financially by the system. The Framework is based on a number of financial indicators and industry benchmarks and a school will be assigned to a particular category (Group 1, 2 or 3) depending on the number of benchmarks it meets.

The erosion of independence (cont. from page 1)

An assessment through the use of the framework, based on the 2008 Financial Questionnaire (FQ) data, will be implemented in 2009 and will continue in 2010.

If the aim of the FHAF is to judge a school's financial viability and not to interfere in the management of schools that are financially sound, this is an ill-conceived and poorly constructed instrument.

AISNSW, together with AIS South Australia and Independent Schools Queensland, is working closely with expert financial management consultants to fully analyse the assessment framework and prepare a briefing paper for our national body, the Independent Schools Council of Australia (ISCA), to be used as the basis of a submission to DEEWR.

The analysis conducted to date has focused on the effectiveness of the DEEWR financial health assessment benchmarks or ratios. It has identified some benchmarks in the framework as assessing the financial viability of the school but many actually focus on the management of the school.

Clearly, operational student / teacher ratios should play little or no part in the assessment of financial risk and viability of a school as these are usually set by each school's council with regard to the strategic direction and financial management policies of the school.

In the sample of schools that were analysed in accordance with the framework, over 80% of those schools that failed the DEEWR student / teacher ratio tests appeared to be financially viable. Student / teacher ratio is a poor indicator of financial viability yet a very important operational ratio, with its value dependent on the particular circumstances of the school. Ultimately a school council decides the most

suitable student / teacher ratio at primary and secondary level for the school. This is clearly a management issue. To set arbitrary benchmarks in this area and to judge a school as either meeting (passed) or not meeting (failed) some general industry standard implies that 'best practice' exists and the school's management needs to bring the school into line with best practice. This is blatant meddling in independent school management, not assessing financial viability.

Research indicates that the major banks focus on three main areas when assessing financial viability:

- profitability and net operating cash flow
- operating surplus relative to debt servicing requirements
- significant movement in student numbers.

Initial analysis of the DEEWR FHAF indicates that nine of the thirteen benchmarks focus to a far greater extent on how schools operate rather than assess their financial viability. Our current investigation indicates that it is likely that up to 70% of the schools captured in the 'financial viability net' through the use of the DEEWR instrument will be unfairly included, resulting in a significant waste of valuable school and government resources.

The need for independent schools to be financially viable, and to maintain that status in the long-term, is not in question. What is in question is whether some of the measures proposed so far to determine viability are sensible, reasonable, or even of any use at all. A focus on the day to day operations of schools does not appear to meet the stated objectives of the FHAF - in fact, it would seem to unnecessarily hinder the operations of schools. AISNSW will be

undertaking more work on this with our colleagues in other states in an effort to ensure that the intent of the FHAF is met, and that the resulting outcome is one that actually assists the effective running of independent schools.

Due to the current necessity to focus AIS resources on the implementation of the Building the Education Revolution program and the administrative pressure which this is also placing on DEEWR, there will be a delay in finalising the submission to DEEWR through ISCA. However, we are hopeful that this will occur by the end of June.

The independent school sector has an excellent working relationship with DEEWR and, considering that 2009 is being treated as a 'trial year' for the framework, we are confident that DEEWR will give appropriate consideration to the ISCA submission.

By the end of May 2009, when the analysis of the framework is completed, AISNSW will publish a list of workshops to be run around the State. These workshops will cover the DEEWR framework, the NSW Government's Section 21A (not for profit) audits, and an update on the federal Award Modernisation process.

The AIS will continue to assist the independent sector in meeting these and other challenges as they will undoubtedly occur during the year.

On behalf of all at the AIS may I wish independent schools a very successful Term 2.



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The Fair Work Bill

On 20th March 2009, Federal Parliament passed the *Fair Work Bill 2008*. The new workplace relations laws will implement the Australian Government's 'Forward with Fairness' policy and replace the *Workplace Relations Act 1996*.

The new legislation applies to independent schools that are constitutional corporations in the Federal industrial relations jurisdiction. Independent schools still in the State jurisdiction are not currently affected. However, they could be subject to the Fair Work laws as early as June 2009, depending on the State Government's decision regarding the referral of its industrial powers.

Some components of the *Fair Work Bill* will operate from 1st July 2009 with the exception of the new modern award system and the National Employment Standards, which will operate from 1st January 2010.

Independent schools in the Federal jurisdiction need to be aware that from 1st July 2009 a number of changes will occur, the two most significant being that:

- Fair Work Australia [FWA] will commence operation.

This means that the unfair dismissal system will be reintroduced to the majority of Australian employees due to the abolition of the 100 staff or less exemption. The exclusion for employees employed for less than 6 months will remain; and

- The concept of 'good faith bargaining' will be introduced.

A New Umpire

Upon commencement, FWA will replace the Australian Industrial Relations Commission, the Workplace Authority, the Workplace Ombudsman and the Australian Building and Construction Commission.

Amongst other things, Fair Work Australia will:

- resolve all disputes, including bargaining disputes
- arbitrate bargaining disputes
- enforce 'good faith bargaining'
- determine industrial action disputes
- resolve unfair dismissal claims, and
- approve collective agreements.

In relation to unfair dismissal claims, FWA will have the discretion to hold a hearing or a conference to decide matters of fact. The focus will be on informal conciliation without legal representation. However, FWA will be able to make an order based on the information provided by each party during the conference and without a formal hearing.

Independent schools should ensure that any performance management process that leads to dismissal is well documented. Though the FWA process will be informal, it will be absolutely critical to be able to demonstrate that the school followed a fair and reasonable process prior to dismissal. The school may only get one opportunity to make its case so it will be important to be concise.

Bargaining in Good Faith

The *Fair Work Bill 2008* gives unions an automatic right to represent their members when an independent school seeks to negotiate a collective agreement with its staff, regardless of whether their members are in the majority. It is clear that in some cases an independent school may be forced to negotiate with two or more unions.

Unions will be able to seek bargaining orders forcing an independent school to negotiate with them. Bargaining representatives on both sides are required to observe certain procedural

requirements in relation to bargaining. For example, there will be the requirement to 'refrain from capricious or unfair conduct that undermines freedom of association or collective bargaining'. While employers are not required to make concessions or reach agreement with unions, the 'good faith bargaining' rules impose obligations on independent schools that could lead to complicated and drawn out collective agreement negotiations.

This is exacerbated by the fact that union claims may be included in negotiations for collective agreements, such as the right to have union membership fees deducted from salary, or paid leave for union training or meetings.

The key to successful collective agreement negotiations in the future will be the existence of a high level of trust between the school executive and the staff. Good communication with staff members will assist principals and heads of school to identify the issues that are of genuine concern to their employees and enable the school to separate those from the union's broader agenda.

Please contact Cathy Lovell or Emma Powys in the AIS Employment Relations Team if you wish to discuss any aspect of the Fair Work Bill, FWA or strategies for collective bargaining.