



NSW Legislative Assembly Hansard

Education Amendment (Financial Assistance to Non-Government Schools) Bill

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 7 June 2006.

Second Reading

Ms CARMEL TEBBUTT (Marrickville—Minister for Education and Training) [7.51 p.m.]: I move:

That this bill be now read a second time.

This bill is about protecting the community interest in our schools. It is about making clear that our collective investment in schools is solely for the benefit of students and it is about making clear what we expect from those schools that seek taxpayer support. The Government has a strong track record when it comes to policy for non-government schools. It is this Government that acted on behalf of parents and the community to raise standards and accountability. Two years ago we reformed the requirements for school registration. Due to the changes that we introduced, the focus is now on the things at schools that make for a quality education every day. We were the first government in Australia to mandate annual reporting by non-government schools to their communities.

Our reforms mean that all schools now give parents meaningful information about how they are performing. We also broke new ground in asking non-government schools to certify annually that they are using their State funding for educational purposes. The basic driver for these reforms has been accountability, not just to parents but to the wider community. The community as a whole has a very significant stake in non-government schools—almost \$733 million annually in 2005-06—and has a right to know how schools are using this investment. In particular, it has a right to know that schools that get taxpayer funding are using it with the best interests of children and young people as their number one priority.

I want to make it clear that this bill is not about restricting choice, nor about restricting the capacity of non-government schools to meet the needs and expectations of their communities. The Government recognises that non-government schools are part of the educational landscape in New South Wales and will continue to be an important element of our system. This bill is about providing clarity and getting the settings right for the future. The bill makes clear what the community's investment in schools is for. It makes clear that the State Government will not provide funding for schools that operate for profit. The basic principle underpinning our State funding framework is addressing school need. We do not and should not fund non-government schools with a view to improving an investor's bottom line.

Our purpose is to assist schools to deliver quality education and to respond to the educational needs of their students. We should do this only if we can be sure that a school is using its resources to further its educational aims. There must be no question that a school that gets public funding will always put these aims first. Running a school is a very significant undertaking, requiring an unwavering, long-term commitment and the input of very substantial resources. Schools have to meet an array of accountabilities and they are exposed to a lot of scrutiny. This bill takes these factors into account. It represents a sensible approach by requiring schools that receive funding from the taxpayer to be not for profit. As a further safeguard, it requires that transactions between schools and their suppliers or service providers are at no more than reasonable market value in supporting a not-for-profit intent.

The New South Wales Government is simply not in the business of dictating which businesses schools should be allowed to deal with. We will not be setting up new bureaucratic obstacles for schools and we will not be adding to regulatory measures that eventually put pressure on fees. It has been suggested that the way a school is organised could, in some situations, give rise to the potential for profit taking. Similarly, the entities that a school deals with could, in some cases, call into question the non-profit status of a school. But at the heart of the issue is how schools conduct their transactions. The New South Wales Government supports school choice. While our first responsibility will always be to sustain a strong and vital system of public education, we acknowledge the right of parents to select schools outside that system.

As a matter of principle, the Government has no intention of preventing the establishment of profit-making schools if they do not intend to seek funding from the public purse. These schools will still have to meet the full range of standards and requirements for school registration. Parents are the ones who ultimately will decide if this type of school has a role and future in our education system. I can assure the House that there will be no difference at all between the standards expected of these schools and any other non-government school in New South Wales.

I turn now to the specific provisions of the bill. Subsection (1) of new section 21A stipulates that financial assistance may not be paid to a school that operates for profit. This sets out in unambiguous terms our aims

and intentions in providing taxpayer funding. It will prevent the State Government from funding schools that are set up for the express purpose of returning a profit to investors. Subsection (2) sets out what "for profit" means in the schools context. Firstly, it clarifies that the bill is targeted at school proprietors. Under the reforms we introduced in 2004, every non-government school must have a proprietor. The proprietor is the legal entity that owns the school. Since the proprietor is legally able to enter into contracts for the school and be accountable for the contract obligations, it is only logical that the provision focus on them.

Subsection (2) states that if any part of a proprietor's assets or income—those that relate to the school—is made over to any other person, the school will be regarded as operating for profit. The use of "person" is intentional and is meant to cast a wide net, since at law a person can also be a corporation or any other entity that can enter into a contract. Subsection (3) sets out some necessary exceptions. Subsection (3) (a) provides for the payment of honoraria or sitting fees to members of a school governing body or the payment of out-of-pocket expenses. Most non-government schools in the independent sector are controlled by governing councils or boards. It is not unusual for the members or directors of a controlling board to receive sitting fees and expenses. This is no different to practice in the government sector.

Many board members put in a lot of hard work, volunteer their expertise and give up much of their time to managing a school. Ultimately, it is a matter for the school community to decide what a director or board member's time and contribution are worth. Subsection (3) (b) ensures that scholarships and prizes that a school awards to students can continue. There is, of course, no intention of targeting this aspect of a school's operations, but we want there to be no doubt that we do not consider scholarships and the like to be "payments" within the meaning of the bill. Subsection (3) (c) specifies that a school can make payments for the provision of property, goods and services in relation to the running of a school, but its transactions must be at no more than reasonable market value.

In effect, this subsection prevents situations where proprietors manipulate or otherwise distort a school's commercial arrangements to derive a benefit for themselves or someone with whom they have a connection. The most common scenario alleged in relation to for-profit schooling is when a school leases land or pays for services at markedly inflated prices. Somewhere at the bottom of the arrangement is a connection or relationship of some kind between the proprietor and that entity or service provider. Clearly under these circumstances it is incumbent on a government to act to protect the taxpayer interest. There is also a consumer dimension—I believe most parents who pay fees would want to know if school money is being siphoned off in this way.

Monitoring is best focused on the prices schools are paying, with reasonable market value as the yardstick. Subsection (3) (d) seeks to ensure that schools that are run by bona fide not-for-profit organisations, such as churches, can continue to trade with other entities that are part of the same organisation. Schools that are run by religious organisations commonly get services from other church organisations. To use an obvious example, the Catholic Education Commission provides a range of services to schools that make up the Catholic community of schools, or dioceses may have arrangements with religious congregations regarding the use of land or the provision of services, or may pay rent for a school that is on land owned by one of the Catholic congregations. What matters is that there is no "profit" in any of this because they all have charitable ends; there is no person being enriched at the end of the chain.

Religious organisations perform many vital services in our community. Running schools is one of these. It is not our intention to disrupt the financial arrangements they have put in place to further their aims in their schools. Subsection (4) provides the Minister with the power to call in information if he or she is of the opinion that a school may be operating for profit. It is appropriate that the Minister have the power to monitor and, if necessary, enforce compliance with the Government's conditions for granting financial assistance to schools, but it is not the intention of the Government that this power be used capriciously or arbitrarily. I want to put on record that the intention of this subsection is to delineate the discretion of the Minister to investigate when specific concerns come to light about a school. It is not intended to provide a licence for general fishing expeditions.

The provisions will be monitored in two ways. First, we will use the existing annual financial certification process to require schools to declare their not-for-profit status and, second, we will set up a process of sample audits, involving a percentage of schools each year. For existing schools, the provisions will come into force from 1 January next year. For new schools, the amendment comes into effect from when the school is registered. New South Wales has a long tradition of excellence in education and we acknowledge that the non-government sector has made a significant contribution to this tradition. The achievements of all schools, however, are made possible through policy and regulatory frameworks that are established by governments, taking into account the interests of the community as a whole. This bill is an important step on behalf of those interests. I commend the bill to the House.