

Organisational and Legal Autonomy in Australian Schools: A Review of the 'New Schools' Policy Dilemma

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Abstract

This paper will explore the distinctions between school systems in Australia that are based within an historical perception of the organisational autonomy of these systems. These distinctions arose from the earliest legislation establishing public schools in the context of vibrant and competing religious (Anglican and Catholic) school sectors in a nineteenth century colonial nation. This article will reflect on the legislative dilemmas facing Australia 150 years later from within this historical framework and its precedents. The paper will focus on how legislation intended to slow the growth of an increasingly popular non-government sector in the 1990s, the 'New Schools' policy, was overturned by an incoming conservative government intent on increasing school choice by reducing regulation and increasing tax-payer funding. The paper provides analysis of policy documents, legislation and government statistics to explain how, in a complex constitutional arrangement like Australia's, participants know what they can expect of the government in education, their right to participate in the educational renewal process, and the certainty (or not) of interpretations of legislative provisions. Our point is that this is difficult if politics and ideology keep changing the policy and legislative framework as happened in the closing decade of the twentieth century. The lesson from Australia is that, despite conflicting legislative positions and contradictory educational policy, the practice of school choice continued in a way that is blurring the distinctions once so important to the vision of an egalitarian society.

Governments have not questioned the Universal Declaration of Human Rights, Clause 3, Article 26, which asserts ... parents have a prior right to choose the kind of education that shall be given to their children. The debate has only ever been about the right of particular schools to Commonwealth Government funding and the amount of that funding (McKinnon, 1996, p. 8).

Introduction

Choice in Australian education has both ideological and practical outcomes. It is generally recognised that whilst acknowledging the right of parents to choose the type of education or school for their child, it is not possible for governments to fiscally support all possible options that might prevail as a consequence of parents exercising school choice. Thus, the right of parents to choose a school for their child is modified by practical realities. This fiscal limitation suggests that taxpayer funds are to be focused where they might achieve the greatest choice and quality of outcomes for everyone.

The Federal Minister for Education, Senator Susan Ryan, of the Australian Labor Party, implemented the New Schools policy in 1985. The New Schools policy was designed to limit replication and excessive fragmentation of educational resources by limiting the number of new non-government schools that could be established. In the decade encompassing the abolition of the New Schools Policy in 1997, however, growth in the non-government sector has continued at both the primary and secondary level, and at the expense of government schools. Since 1997, the number of new non-government schools being

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established has increased markedly. In the State of NSW, with relatively few registration criteria, schools are reasonably easily established, and with government funding, appear less likely to fail.

Conceptually, and practically, the abolition of the New Schools Policy appears to heighten the incongruity of reinforcing historical distinctions between government and non-government school systems. The government funds all schools in Australia. All schools, both government and non-government, receive greater funding if they are poorly resourced or deemed to be in need, and less money if they appear to be more greatly resourced. The distinction between school systems fundamentally lies with an historical perception of the organisational autonomy of these schools whereby government schools are run by the state, and non-government schools are perceived to be independent of the state. This difference is increasingly being challenged as non-government schools receive increased funding, and increased accountability with this funding, and with many public school proponents now arguing for increased autonomy for State schools, in an attempt to win back market share and to reflect the public's desire for more school choice. This article will briefly review these historical legal precedents for current policy, before using the 'New Schools Policy' to forensically analyse to what extent policy driven by legislation is effective or not.

From the early foundations of European established Australian society, there have been clearly delineated educational sectors operating, and often competing, to meet schooling requirements. Along with a public school system, Australia has a strong Catholic school network embedded within a well-established non-government school sector. At different times in Australia's history, the church and private means have funded non-government schools. Since the 1960s, however, schools have either been partially funded (non-government schools) or fully funded (government schools) by a combination of Commonwealth and State funds. An overview of history would suggest that, in one sense, education in Australia has returned to where it began, with the government funding two separate but similar school systems competing for the same market-share of pupils, with limited financial resources.

Legislating 'Free, Compulsory and Secular' Education in Australia: 1880 – 1904

Suppose it had been proved that not a single farthing had been given to Denominational schools since the passing of the Act, would that be a reason why we should continue a system in which the Government opposed itself throughout the country – (cheers) – a system under which the Government supported sometimes as many as four opposing schools where one was sufficient: a system under which several children were as it were gnawing at one crust, – where several schools were starving where one might live? (Cheers) ... We saw that by means of this denominationalism the State was divided against itself in the small schools throughout the country; but we were determined; that education should be national and uniform, compulsory, secular and free. (Cheers). We demanded a national system as a thing necessary for the extension of education to every child in the land (Transcript of a Public Meeting: Barry, 1874).

Towards the end of the Nineteenth Century, there was a pronounced sectarian – secularist conflict growing throughout the western world, particularly within the field of education (Crowley, 1974). In Australia, it had been precipitated by the attack of an Irishman, Henry James O'Farrell, on Prince Alfred, the second son of Queen Victoria, whilst he was visiting in 1867-8 (*Sydney Morning Herald*, 1868).

The resultant growing anti-Irish and anti-Catholic feeling in Australia culminated in a push for 'Free, Compulsory and Secular' schooling (Davis, 1969). It matched similar debate in England that was focused on the role of science and religion in schools and was triggered by the growing influence of evolution and Darwinism. In Australia, Protestants were beginning to consider non-sectarian religious instruction in schools either, according to Turney (1972), through indifference or because they actively began to support a national concept of schooling.

The Roman Catholic Church however, stood firm in its refusal to accept secular instruction for the children of Catholic parents. In Rome, Pope Pius IX, denounced liberalism and State education in the *Syllabus of Errors* attached to his 1864 Encyclical (Turney, 1972). In the doctrinal era of Papal Infallibility pronounced in 1870, Roman Catholics were encouraged to reject an education system not associated with the Roman Catholic Church. He refused to acknowledge the value of an education system that was unrelated to the Catholic faith and to the power of the church (Austin, 1972).

At this time, about one quarter of the Australian population were Roman Catholic, the vast majority of whom were immigrants from Ireland, sensitive to oppression and persecution, particularly from the English. Partridge (1968, p. 25) observed:

Thus a sense of the permanent possibility of discrimination, oppression, even of religious martyrdom, often reveals itself in Australian Catholic social and educational utterance in the last century, a feeling that was in turn intensified by the attacks of rationalists and secularists as well as by the student anti-Romishness of some Protestant controversialists.

As the push for a national education system continued, Australian Roman Catholics became increasingly aggressive in their desire to maintain and promote a separate Catholic education system (Morris, 1972). Having never accepted that education could remain secular, Roman Catholics ran and organised their own independent education system. Catholic teaching orders were started that were inexpensive to run, and provided a committed and devoted teaching force.

In NSW, in 1879, Archbishop Vaughan and three bishops issued a series of pastoral letters condemning State schools and recommending Catholic parents send their children only to Catholic schools.

... let parents send their children, when of fit age, exclusively to Catholic schools... let all Catholic parents know that they cannot, without serious guilt, place their children in proximate danger of perversion... no Confessor can absolve such parents as are willing to expose their children's souls to the blighting influence of an alien creed or a secularist system... let those who are so unhappy as to be sending their children at the present moment to Public schools, withdraw them as soon as possible... (*Sydney Morning Herald*, 25 July, 1879).

Vaughan went beyond encouraging Catholics to attend only Catholic schools; he actively denounced and attacked the national system (Partridge, 1968)

... this expenditure on godless education, this studding the colony with [State] schools which the church knows from experience will, in the course of time, fill the country with indifferentists, not to speak of absolute infidels... (Archbishop Vaughan, *Pastorals and Speeches on Education*, Sydney, 1880; cited in Partridge, 1968, pp. 26-27).

Ironically, by unifying Catholics to a common cause, these pastorals were fundamental in assisting the passage of the 1880 Public Instruction Act (Morris, 1969). Motivated by the example of Father Woods in South Australia, the Roman Catholic Church in NSW began to establish and run their own system of schools (Morris, 1972). This factor, along with the Protestants having largely relented from the need to have their own system of schools, allowed for the 'free, compulsory and secular' Public Instruction Act introduced by Henry Parkes, to pass through NSW Parliament on 25 February, 1880.

The Public Instruction Act (1880): the State takes responsibility

Henry Parkes, parliamentarian and then Premier of NSW, appealed to the rights and needs of ordinary men and women by linking State education with the concept of democracy (Partridge, 1968). Assisted by solid economic growth and a rapidly growing population, both of which placed increased pressure on the schools, he denounced the role that sectarian rivalry and distrust played in the lack of school provision (Barcan, 1965; Partridge, 1968).

The disadvantages of the present systems may be summarised thus: – (1) That education thus carried on is unnecessarily expensive; (2) that it is, consequent on the very character of the systems, of an inferior quality; (3) that the present method is calculated to engender jealousies and uncharitable feelings among the different sections of society; and (4) that our present education is in an alarming degree limited in its supply (Blair, 1876 cited in Austin, 1963, p. 174).

Although the 1880 Act was to provide for the introduction of free, compulsory and secular education, (low) school fees were charged, children were required to attend only 70 days out of a possible 120, and secular education allowed for religious instruction to take place, albeit non-denominational (Turney, 1972). Nevertheless, the passing of this legislation reflected a growing liberal belief that educational progress was perfected through legal and parliamentary institutions, and the increasingly popular understanding that the State was responsible for education (Turney, 1972).

According to Barcan (1980, p. 144), there were four main ramifications of the Public Instruction Act, 1880.

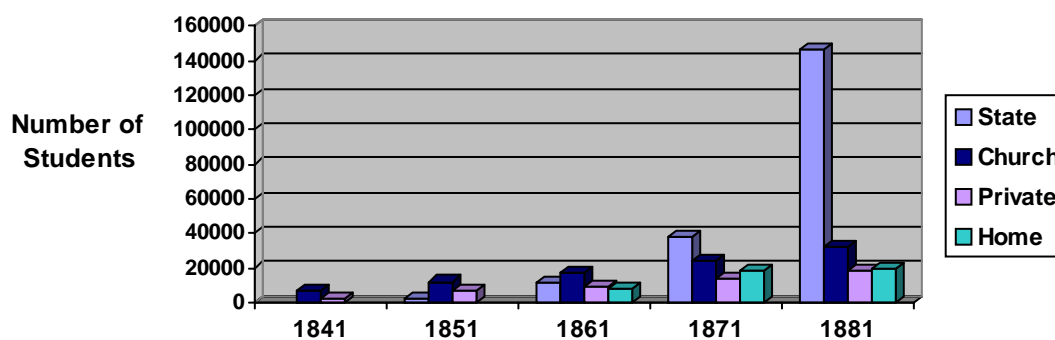
1. It advanced the separation of church and State in education, and heralded the end of a significant number of non-Roman Catholic denominational schools (Davis, 1969).
2. It transformed the State primary school, originally intended for lower class children, into a school catering for all social classes.
3. The Act widened access to secondary education as public schools provided a cheap form of secondary education, for both boys and girls, in the city and country areas.
4. By making education compulsory, the Act obstructed the employment of children in the workforce (Barcan, 1980).

The abolition of State aid for denominational schools, allowed for by the Act, took place on 31 December 1882 and freed funds for expansion of the State system. Churches could still run schools but separation was complete. At this stage, there was no supervision of these denominational schools by the State.

From 1880 to the early 1900s, there were a number of marked changes in both the direction and the emphasis of church-State relations in education. Whilst the implementation of the 1880 Public Instruction Act was a 'triumph for the liberal advocacy of separation of church and State', many of the reasons behind the passing of this Act were founded on the prejudices and fears of an openly sectarian society (Hyams & Bessant, 1972, p. 63). The Protestants objected to the assertive manner of the Roman Catholic Church in establishing and maintaining their own educational system. With anti-Catholic feeling so strong, the government elected to ban State aid to all denominational schools. It was to be another eighty years before this decision on State aid was to be overturned.

While the numbers of students reported are likely to be over-inflated, and figures need to be treated carefully (Barcan, 1965), it is possible to note major trends over this period. Graph 1 illustrates that while education at home was only measured from 1861 onwards, it appears to match those electing to educate their children in private venture schools.

Graph 1. Relative Growth of School Types: 1841-1881



(Based on numbers enrolled, cited in Barcan, 1965, p. 173)

From the time of their introduction, State schools increased rapidly while the growth rate of denominational slowed markedly. 1881 marks the beginning of a new era, with the introduction of compulsory education, and the distinction between Catholic and Protestant Denominational schools (Barcan, 1965).

Education, National Constitution and Federation of Australia in 1901

Federation of the six colonies into the Commonwealth of Australia took place in 1901, and all governmental responsibilities were divided between the Federal and State governments (Clarke, 1957). All States had functioning and expanding education departments, most had a university, and all offered some form of technical education.

In the original Federal constitution, the Commonwealth government had no 'coherent education policy' and made no mention of education at all (Smart, 1978, p. 14). This ensured that education was, and remains, the responsibility of individual States (Hogan, 1984). There are two clauses, however, that allow for the Commonwealth to intervene in State education matters: Scholarship schemes (Section 51 [xxiiiA]) and specific purpose grants (Section 96).

Section 96 of the Commonwealth of Australia Constitution Act (9 July, 1900) is the most commonly used reason to justify the giving of grants to the States for the purposes of education (Smart, 1978). It states:

During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament sees fit (Commonwealth of Australia Constitution Act, 1900).

Rights vs Needs: policy discourse and the State

In an Australian Labor Party [ALP] Policy speech given prior to the 1972 Federal election, the Leader of the Opposition, Gough Whitlam, warned of the increased controls and requirements that would be placed on the Commonwealth funding of non-government schools (Whitlam, 1972). He made the distinction not only between government and non-government schools but also between rich and poor schools within each category.

The Labor party believes that the Commonwealth should give most assistance to those schools, primary and secondary, whose pupils need most assistance. We reject the proposition that administrative convenience should over-ride the real needs of schools. We reject the argument that well-endowed schools should get as much help from the Commonwealth as the poorest State or parish school, just because it is easier to count heads than to measure needs... We will establish an Australian Schools Commission to examine and determine the needs of students in government and non-government primary, secondary and technical schools (Whitlam, 1972, p. 1).

Whitlam was elected Prime Minister in December 1972, taking the first Federal Labor party into power since 1949. He immediately appointed an Interim Committee for the Australian Schools Commission, headed by Professor Peter Karmel (Mortensen, 1985). Professor Karmel tabled a report on 18 May 1973 titled 'Schools in Australia', which looked at resource usage and allocation in non-government schools and made recommendations concerning its findings (Karmel, 1973; Chapman, undated).

The Committee recommended seven programmes of Commonwealth expenditure in education of which three related to recurrent resources, including the allocation of general recurrent grants to government, Catholic, and other non-government schools (Karmel, 1973).

The Schools Commission was responsible for categorising non-government schools for general recurrent funding (Karmel, 1973; Morensen, 1985). Although the Karmel report had only been tabled in May, by August the Schools Commission had classified each of the 734 non-systemic, non-government schools into one of eight possible categories, designated A to H, with A being the most highly resourced (Carrick, 1989; Cleverley, 1978).

Initially it was recommended that highly resourced schools should receive no funding as they already surpassed the committee's resource target for 1979, interpreted as the minimum level of resources used in schools compared with a defined standard (Davey, 1978; Carrick, 1989). Schools designated as Category A, approximately 19% of them, required the least assistance and it was planned to phase out Federal aid to these schools between 1974 and 1975 (Karmel, 1973; Carrick, 1989).

Despite the Commission's intention, the funding for Category A schools was ended immediately and there was a huge public outcry. The response by the Government was then to reduce the number of schools in Category A from 105 to 50 (Smart, 1978). On 15 November 1973, the States Grants (Schools) Bill was introduced to the House of Representatives. It moved between the Senate and the House of Representatives until a basic level of aid was approved and accepted for all schools, regardless of Category level (Bessant and Spaul, 1976; Smart, 1978).

The concept of 'rights' versus 'needs' thus became dominant in the policy development discourse (Karmel, 1973). Funding was to consist of a Basic Grant (20% of the cost of educating a child in a government school) and a payment based on the Schools Recurrent Resource Index (SRRI), a recurrent funding level of 10-18% of the standard cost, according to assessed need. The method of allocation of general recurrent grants was thus changed from a strict per capita basis to one incorporating a judgment of need. This judgement of a school's needs was based on inputs, not outcomes. The funding categories were essentially determined by the pupil-teacher ratio; a value that was relatively high for Roman Catholic schools and relatively low for Anglican schools (Karmel, 1973).

The driving philosophy of the Karmel report was to ensure an equality of outcomes, not equality of opportunity (Karmel, 1973). Karmel believed that an equal society could be possible through schooling and by engaging in positive discrimination through the allocation of special funds for at-risk groups or schools.

The aim of the Schools Commission was to bring all schools up to a predetermined resource standard, and to provide special assistance for particularly disadvantaged schools (Karmel, 1973). Marginson (1985, p. 2) argued the negative effects of the Karmel Report included restricting the definition of equality to economic or material terms.

... the Karmel Report failed to develop an understanding of the dynamics of the dual systems of schooling. It contained no analysis of the social role of government schooling and of private schooling in its various forms, and no overt analysis of the relations between the sectors – although these relations are central to the problem of equality of outcomes (Marginson, 1985, p. 2).

By not recognising problems associated with access to different sectors of education, such as transport and housing there was a fundamental 'failure to address the broader social determinants of educational inequality, including the social forces at the base of the private school sectors' (Marginson, 1985, p. 4).

Government funds and the growth of non-government schools

Between 1977 and 1979, there was a slow but gradual intersectoral transfer of Federal funds from government to non-government schools (Smart, 1978). This was largely to address the significant number of poorly resourced non-government schools, and with no additional money being given to education, the funds were transferred from the State system (Smart, 1978).

Critics note that between 1978 and 1982, there was a 41% growth in the number of non-Catholic and non-Anglican independent schools with high government subsidies and low school fees acting as a catalyst for new school establishment (Marginson, 1993). Rather than raising standards of pre-existing schools, it appeared to allow for the expansion of the lower end of the non-government school sector, at the expense of the government sector. Because of the lack of quality provision and facilities in many of these new non-government schools, the benefits of State aid were raised as issues once again.

In 1984, the Commonwealth Schools Commission recommended that new non-government schools should meet specific enrolment guidelines and that Commonwealth establishment grants should only be given to new non-government schools serving developing areas (Commonwealth Schools Commission, 1984). In 1985, the Schools Commission drew up a list of proposals for the assessment of applications for Commonwealth assistance from proposed new non-government schools. Ryan tabled it on 21 March 1985 and all their recommendations were accepted. This was known as the New Schools Policy (McKinnon, 1995).

New Schools Policy

Twelve funding categories, established in 1984, were used for the purposes of determining Commonwealth funding levels of non-government schools. A Category One school was considered the most highly resourced and received less Federal funding. Schools in Category Twelve were determined to be more poorly resourced, and received greater Federal funding.

'Systemic schools' is a term used to distinguish non-government schools, which are grouped for management purposes into 'systems' (Hogan, 1984, p. 162). Schools belonging to a system of schools are all funded at the same Category level, regardless of their individual resources. In the New Schools policy, new non-government schools were restricted to a maximum funding level of the system to which they belonged (for example, Category Ten for systemic Catholic schools).

The allocation of a school to a particular funding category was determined by an Educational Resource Index (ERI). Federal recurrent grants were made to non-government schools on a per capita basis but the size of the per capita grant was determined by comparing the schools resources to a 'community standard of educational and financial resources' (Department of Employment, Education, Training and Youth Affairs [DEETYA], 1997, p. 1).

This standard represented a funding benchmark based on educational judgements about desirable resource goals for Australian schools. The ERI was developed as the principle tool for assigning non-government schools and systems to one of twelve funding categories, each funded on the basis of a comparison of the school's private income with a standard level of resources derived from the community standard (DEETYA, 1997, p. 1).

In May 1988, the Federal Budget implemented changes to the New Schools Policy, which allowed for the introduction of Commonwealth criteria for funding eligibility of new schools. By establishing the criteria to be met, if a school became eligible for increased funding, it increased its accountability to the Commonwealth government, despite education constitutionally remaining the domain of the States.

These criteria were above and beyond those established by the individual States and included restricting new non-systemic schools to a Category Six funding cap, regardless of the assessed resources of a school. In contrast, systemic schools, regardless of their resources, were funded at the systemic level – usually Category Nine or Ten (McKinnon, 1995).

In 1991, further amendments to the New Schools policy restricted the Category Six funding cap to the first five years of a school's existence. At the end of these five years of receiving general recurrent funds, schools would not have this limitation applied if they sought a review of their funding category.

One of the primary reasons for establishing a Category Six funding cap on newly established schools was, allegedly, to ensure that those who wished to start a school were committed both financially and educationally to the process and to ensure that the schools were economically viable to survive long term. Financial viability extended to ensuring the school was able to meet their commitments on a long term basis and was not, for example, dependent on unsustainable voluntary effort or teachers being paid less than award salaries (McKinnon, 1996).

Yet there were a number of potentially discriminatory issues associated with such a practice. The inequity of establishment practices for a new systemic school compared to a non-systemic school was clear, especially if they served the same socio-economic group (McKinnon, 1996). McKinnon (1996) suggested that the rationale to support a systemic school over a non-systemic school may be a result of the pre-existing support structures in place for the new systemic school and their likely desire not to support a sub-standard resource school, and yet this was not enough to endorse discriminatory decisions. It is noteworthy that McKinnon, heading a governmental review, and with access to both government support and resources, was not able to determine more accurately the rationale behind a government policy decision that clearly had equity issues associated with its outcome.

Planned Educational Provision

The New Schools Policy determined that non-government schools seeking to become established were to be consistent with the requirements for Planned Educational Provision. These were determined by the NSW Department of Employment, Education and Training's *Administrative Guidelines for Common-*

wealth New Schools Committees and Joint Planning and Co-ordinating Committees, 1993 (Committee Guidelines) (McKinnon, 1995). These guidelines were fairly prescriptive. New non-government schools could not establish themselves in areas of declining enrolments. Submissions regarding the establishment of a school were open to the public and the 'potential impact on existing schools was now considered' (Marginson, 1993; Chapman, undated, p. 157).

Theoretically, new school applications were predominantly assessed on their impact on the local community and on existing non-government and government schools, in an attempt to reduce wasteful use of government resources and to avoid unnecessary duplication. Yet, non-government schools claimed at the McKinnon Review (1995, p. 31), that they were required to plan 'in ignorance of government intentions for new schools or the reorganisation of schooling in particular areas. Conversely, the government often plans, it was claimed, in ignorance of non-government school intentions'.

As part of the New Schools Policy, minimum enrolments for new non-government schools were increased from the pre-existing forty up to fifty students in primary school, from twenty to twenty five in each year of junior secondary school and from fifteen to twenty in every senior secondary school year. Unrealistically, given sparsely populated outback areas, even Aboriginal community schools were required to have a minimum of twenty students in primary schools, ten students in each junior secondary year, and eight in each senior secondary year. The core rationale for establishing minimum enrolments was based on a schools ability to meet the greatest possible educational and curriculum needs, with the most practical and prudent use of resources. McKinnon (1996, p. 6) refers to it as a notion of 'best fit' which drives decisions relating to school and class size, and minimum enrolments.

Table 1. Commonwealth Minimum Enrolment Criteria for New Non-government Schools

	Pre – 1985	New Schools Policy
Primary	40	50
Junior Secondary	20	25
Senior Secondary	15	20

(McKinnon, 1996)

Maximum and minimum requirements did not limit schools from taking in children if over a set limit, or from starting if they could not reach minimum numbers. Children attending such schools were, however, unfunded by the Commonwealth government and received funds at the least level of assistance (Category 1) from the NSW government (NSW Parents Council, 1994).

Maximum numbers were set to assist in the orderly planning of new school establishment. It was expected that their implementation would allow for the orderly growth of schools so that they would not expand at a rate that would jeopardise other schools programmes or their own financial viability (McKinnon, 1995, p. 57). There was a great deal of controversy over maximum numbers, largely because they were seen to constrain growth.

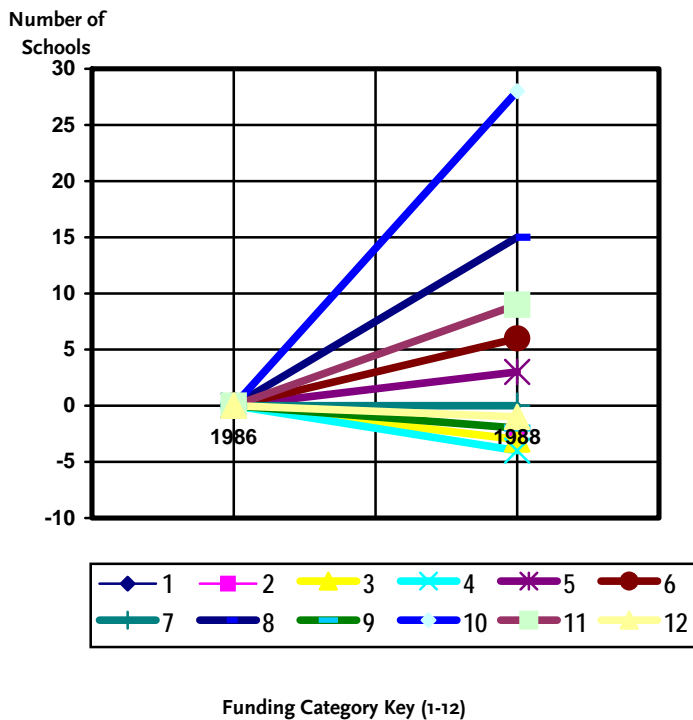
A number of changes were made through the New Schools policy implementation. Amongst these changes, establishment grants to new schools were abolished effective from 1989, and schools no longer had to demonstrate financial viability to be established. Over time, financial viability was deemed to be the school's responsibility and no longer the responsibility of the government (McKinnon Review, 1995). As a corollary to this, whilst previously schools could only earn an additional 3% of their private income in real terms without government funding penalties, restrictions were now lifted on established non-government schools wishing to raise funds from outside sources (McKinnon, 1995).

During the period from 1986 to 1988, with the establishment of the New Schools Policy, the net increase in new non-government schools was 17. This was a product, however, of 117 new schools opening and 100 schools closing (McKinnon, 1995). It is clear from Graph 2 that most of the non-government schools being established were funded at Categories Eight, Ten and Eleven, with Category Ten being proportionately the most significant. The proportion of students attending non-government schools increased from 25.8% to 27.3% (Data derived from McKinnon, 1995, p. 10).

Enrolments in the period from 1989 and 1994 increased, and although the total number of schools decreased, from the beginning of the New Schools Policy in 1985, a total of 251 new schools opened and 18 of these schools closed (McKinnon, 1995). The total number of schools decreased overall due to amalgamations and rationalisations of current concerns. Further modifications to the New Schools Policy occurred in 1991. The States became increasingly responsible for establishing State registration criteria for the new schools. The Category 6 funding cap placed on newly established non-government schools

was to be in effect for the first five years only, at which time the schools could be reassessed and categorised into any one of the twelve categories according to need (McKinnon, 1995).

Graph 2. Relative Growth of New Non-government Schools by Funding Category; 1986, 1988



McKinnon (1995)

Review of the New Schools Policy

By the end of eight years of Labor in power at the Commonwealth level, rates of new non-government school establishment had slowed, funding for already existing non-government schools had stabilised, as had the transfer rate of students between the government and non-government school systems. There was, however, growing criticism of the New Schools Policy and the funding strategy for non-government schools, the most vocal of which was aimed at the perceived discriminatory Category Six funding cap that applied for the first five years of a new non-systemic, non-government school's existence.

The Labor government called for a review of the New Schools Policy (and subsequent amendments) in 1995, to be undertaken by Professor Ken McKinnon.

The most important point about the Review is that it must be completed and the Government state its position before the next election so that we all know what we are voting for, or against (Delaney, 1995 cited in NSW Parents Council, 1995).

The final report of the McKinnon review was given to the ALP Education Minister in the caretaker period leading up to the 1996 Federal election. Consequently it was not released until after the Federal Liberal Coalition party came to power later that year, when Dr. David Kemp became the Federal Minister for Schools, Vocational Education and Training.

The McKinnon Review (1996) found there were significant arguments for easing minimum enrolment requirements in certain situations, especially pertaining to rural communities (defined as areas with less than 5000 in population). Overall, however, the Review was keen to maintain some form of minimum enrolment numbers, stating that the long term viability of a school with smaller numbers was less assured (McKinnon, 1996), regardless of whether it was catering to a rural community or a specific ethnic group. The Review concluded by recommending a start up period for new non-government schools, of approximately three years, allowing school enrolments to grow to the minimum requirements.

It is interesting to note, in light of later events, that the McKinnon (1996) Review found that the Commonwealth should have the right to establish minimum enrolment levels, as the States were not consistent in their application of the ruling. The Review found the States too arbitrary in changing the rules, had shown a marked reluctance to agree with the Commonwealth in this matter, and could not guarantee that they would allocate resources prudently (McKinnon, 1996). Additionally, the Commonwealth has always overridden the State in the provision of funds, on the basis of needs.

Abolition of the New Schools Policy

In preparation for the 1996 Federal election, the Liberal Party again released a series of policies they hoped would reflect their ideological position and provide a practical alternative to the New Schools Policy adopted by the ruling Labor government.

These policies intended that the New Schools Policy be abolished, deregulating the establishment of non-government schools and extensions (Marginson, 1997). The New Schools policy was seen by the Liberal/National Coalition as restricting the 'number, funding and growth of non-government schools and, therefore, the options for parents to choose the most appropriate school for their child' (Liberal Party Budget Papers, 1996, pp. 29-30). From 1 January, 1997, all State and Territory registered schools would be eligible for one of the twelve Commonwealth funding categories. All existing non-government schools would also be eligible for one of the full range of funding categories and would no longer be restricted to Categories 1-6 for the first five years.

To receive Commonwealth funding, non-government schools would have to enter into a funding agreement with the Commonwealth, be non-profit, run by a body corporate and must meet their State registration criteria. The individual States or Territories would be responsible for establishing their own criteria for school registration and new school establishment.

The Coalition government came to power in 1996, predicting the proportion of students attending non-government schools would rise to 31.1% by the year 2000. As part of their strategy, they sought to reclaim money saved by the States as the student moves from the government to the non-government system (theoretically the State Government saves \$3425 per student). The Commonwealth government planned to claim 50% of the savings by limiting the amount given to the State in the form of government school general recurrent grants.

On 19 September, 1996, the States Grants (Primary and Secondary Education Assistance) Bill, 1996 was tabled by the Federal Government. The Second Reading of the Bill commenced on 15 October, 1996. Its philosophical emphasis was on the provision of choice for parents as a means of improving educational outcomes, and the devolution of decision making to the community and parental level.

The purpose of the Bill was to implement legislation for the Commonwealth Specific Purpose Program funding for student for 1997-2000, and to abolish the New Schools Policy. The main theme of the bill was to focus on improving educational outcomes by increasing choice. As stated in Parliament:

The bill further supports the devolution of decision making about education to parents and communities to ensure that education is responsive to student needs. The bill will provide choice for better options for the future (House of Representatives, 1996, p. 4796).

The Australian Labor Party opposed the legislation on two main grounds. The opposition argued that the abolition of the New Schools Policy would lead to uncontained expansion of non-government schools. They also stated that government schools would be disadvantaged by the Commonwealth withholding half of the savings made by the States, if non-government school enrolments increased (Australian Parents Council, 1997, p. 4).

Nevertheless, the Federal Minister, Dr. Kemp, formally announced the abolition of the New Schools Policy on 20 August, 1996 (Kemp, 1996b) under the States Grants (Primary and Secondary Education Assistance) Act, effective from 1 January, 1997. The public reasons for such a decision stemmed from the perceived 'inequitable and unfair' implications of the bill, with Kemp claiming it failed in its intention to limit the growth of the non-government school sector and placed discriminating funding caps on certain schools (Kemp, 1996c, p. 2).

Under new arrangements, there were to be no funding caps for non-government schools, and all funding categories were to be available to all schools according to need. Kemp abolished the minimum and maximum enrolment limits on non-government schools and ordered a review of the ERI, the mechanism for determining the level of federal funding to non-government schools.

The discussion, in response to the proposal to abolish the new schools policy, was emotive and dogmatic. Horin, for example, claimed:

It will be a free-for-all with any cult, religious or ethnic group able to get Federal funding to start up a school, regardless of how few students it attracts, how financially viable it is, or how it affects the viability of nearby private and government schools. If it is a primary school, it is free to institute virtually any syllabus it likes, including those imported from American fundamentalist Christian schools. And all private schools, unlike government schools, can flout discrimination laws despite their dependence on a high level of government funding. (Horin, 1996, p. 2)

On the other hand, utilising terms such as 'bureaucracy', 'discrimination', 'restricted' and 'wasteful', Kemp employed a similarly emotive vernacular in describing the limitations imposed on new non-government school establishment practices by the New Schools Policy (Kemp, 1996b). Kemp's arguments for lifting the policy appeared firmly based on the ideological foundation of a parent's right to choose, arguing that the policy 'restricted parents' rights to choose the most appropriate school for their child' (Kemp, 1996b).

Parents will now have more options from which to choose the best school to meet their child's needs.... It [the New Schools Policy] restricted parents' rights to choose the most appropriate school for their child. (Kemp, 1996b, p. 1)

A second claim for abolishing the New Schools policy was that it discriminated against non-government schools and stifled their development (Kemp, 1996b). Kemp argued that the purpose of the New Schools Policy was to restrict parental choice on education by restricting the growth of new non-government schools (1996a). Although it failed in its purpose to restrict the growth of the non-government sector in terms of total student enrolment, the discriminatory practices were still in place, resulting in frustration and costly delays in establishing and expanding schools (1996a).

Kemp's third reason for abolishing the New Schools Policy appeared to be based on the duplication of bureaucratic procedures and resources. The Commonwealth, with the New Schools Policy, had specific selection criteria for electing which new non-government schools could receive Commonwealth funding. It was then up to individual States to effect their own registration criteria (Kemp, 1996b).

Deregulation of the Non-government School Sector

The last decade of the twentieth century saw a number of changes to the establishment practices of new non-government schools around Australia, and particularly in the State of N.S.W. The Commonwealth New Schools policy acted as a framework for the planned educational provision of schools in the individual States. It was a regulatory structure used to ensure that new non-government schools were not threatening the viability of existing government schools, and were themselves likely to survive.

The abolition of the New Schools policy in 1997 forced the regulatory process onto the individual States. At the time, N.S.W had minimal establishment criteria, effectively meaning schools were being established in a deregulated environment. The reaction to this situation was predictably vocal, and emotive. The NSW Teachers Federation (NSWTF) was outspoken in its criticism of the new policy changes, as was the Australian Schools Lobby and the Australian Education Union. The latter called on church leaders in all States to oppose the Federal government's deregulation of the non-government school sector (Jones, 1997).

Not surprisingly, non-government organisational bodies such as the National Council of Independent Schools Associations, the NSW Association of Independent Schools, and the Sydney Anglican Schools Corporation were supportive of the changes. However, for a policy change that will ultimately encourage competition between and within school sectors, the debate does not always follow clear government versus non-government school divisions. Both the Association of Heads of Independent Schools of Australia and the National Catholic Education Union, representatives of the non-government school sector,

supported planned and regulated growth of this sector, and the careful rationalisation of scarce resources in defending their reluctance over the New Schools policy abolition (Cheetham, 1996).

The National Catholic Education Commission, responsible for the biggest percentage of non-government schools, argued that schools should not start up unless 'they are demonstrably viable and unless their quality is assured' (EETLC, 1996, p. 284). This may be a result of knowing that Catholic schools were losing their market share at the cost of the non-Catholic, non-government schools. Nevertheless, the prevailing view of the non-government school sector has been to encourage the lifting of restrictions that appear arbitrary and result in funding penalties.

Deferring registration criteria to the States was a problematic move. Individual States have varying degrees or accountability in determining the viability of new non-government schools. NSW has talked of tightening minimum registration requirements, although apart from slight shifts in wording, these requirements have not altered in any significant manner since the New Schools policy was abolished. Whilst other States have different and sometimes more stringent criteria, no States currently require the taking into account the impact on other schools by establishing a new school (EETLC, 1996).

Conclusion

Tracing the history of policy changes within one area of education – establishment practices of non-government schools – is informative for a number of reasons. Firstly, policy changes are being enacted, with strong, clearly defined outcomes that affect tens of thousands of students and their families. Findings of this magnitude are significant for policy makers, educators and politicians, who are required to make informed decisions in this area, for the greater benefit of society.

Secondly, the direction of change is away from the traditional comprehensive State school system with its professed egalitarian overtones, founded on the societal belief that these schools are the foundation of social justice and democracy. The reality of this perception is being challenged on two fronts: firstly that comprehensive schools are the sole means by which social justice and egalitarian democracy can be delivered and secondly, by questioning whether these traits are mutually exclusive with the need to recognise the rights of individuals to choose, on the basis of their customs, beliefs and/or educational philosophy.

Finally, these policy changes would indicate that the nineteenth century perception that it is the role of the State to legislate for and deliver education to all citizens is being challenged. The increasing trend of financing both in number and amount, non-government schools, at the same time as requiring government schools to become more autonomous and competitive is an example of the tensions that arise from the intersection between policy and practice. Historically, Australian governments have not been able to similarly fund directly competing or parallel education systems long term (a point used as the basis for much political argument).

In practice, existing systems appear to be becoming more similar in their autonomous decision-making capacity, within the constraints of government funded parameters. Current debate is restricted within, and informed by, a paradigm that sets these educational systems as competing and mutually exclusive, yet existing practice would suggest this is not the case. Other countries, albeit with different educational structures have, nevertheless, discovered that it is possible for different educational systems to be unified by outcomes and a universal concept of schooling. Glenn (1991, p. 19) argues:

... other Western democracies have found it possible to reduce conflict at the national and local levels through recognition that parents want and deserve different approaches to the education of their children. Acceptance of diversity in the world views that inform schooling and in pedagogy that different schools employ has not prevented the development of unified *systems* of universal schooling and of a high level... of educational outcomes.

Policy changes in Australian education, enacted at a Federal level, and reinforced at a State level, both for and against non-government schools, have done little to stem or to discourage the growth of the non-government school sector, despite its intention. Abolishing the New Schools policy in 1997 appears to have resulted in more non-government schools being approved for establishment, and more non-government schools being approved to extend their mode of operation than would have been predicted prior to 1997. After abolishing the New Schools policy, it has been shown that more new non-

government schools are typically funded at higher Category levels than prior to 1997. In effect, non-government schools have increased by most measures of growth.

While a debate about the various merits of a dual government and non-government school systems has been evident for nearly two hundred years, modern political debate over funding of non-government schools has been fought with great intensity since the 1950s and 1960s. Yet evidence would suggest that, political debate aside, policy changes have had little effect on underlying trends towards increased non-government school attendance and growth, and have had a positive effect, though not necessarily intended, on the number of those enacting choice within and between educational sectors.

Government and non-government schooling have both played an integral part in Australia's educational landscape for over two hundred years. For practical purposes, these sectors are not going to disappear, at least not for some time. Of more interest is whether schools, regardless of the educational sector to which they belong, can develop significant cultures that would allow them to foster a sense of individuality, whilst still providing some form of accountability and a form of common education. Glenn (1989) argues that this is possible if the outcomes that to be expected are clearly established defined in terms of tangible, measurable results. The State must remain responsible, on behalf of the society it represents, to ensure that these expectations or outcomes will be met (Glenn, 1989).

The tension between freedom of choice (or a form of choice) and a common quality of schooling, regardless of the school system being used, need not be irreconcilable. Future policy, at all levels, needs to address the changes that have begun and that have been exacerbated by the 1997 decision to abolish regulation requirements for new non-government schools. By recognising the level and extent of parental interaction with the educational system, policy makers and educationalists can use the knowledge gleaned to improve educational opportunities and outcomes for all Australian students, regardless of whether they are attending government or non-government schools.

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