



APPLICATION – LETTERS PATENT

Submission in Response

THE PRESBYTERIAN AND METHODIST SCHOOLS ASSOCIATION

Prepared by Beyond PMSA

26 April 2019

Part 1: Purpose and Context of this Document

1. Purpose of this Document

1.1 This document has been prepared by Change and Beyond Incorporated (more commonly known as **Beyond PMSA**) (the **Applicant**) as a document which provides submissions in response to the following documents (collectively referred to as the **Respondent Submissions**):

- (a) “*Submissions to Attorney-General through Commissioner of Office of Fair Trading in relation to Presbyterian & Methodist Schools Association Letters Patent on issues arising out of Beyond PMSA Application and Submission dated 25 May 2018 and Supplementary Submission dated 28 February*” (the **PMSA Submission**) prepared by the Presbyterian and Methodist Schools Association (**PMSA** or the **Respondent**) via its lawyers, Neumann and Turnour Lawyers, dated 27 March 2019; and
- (b) “*Joint Submission of the Presbyterian Church of Queensland and the Uniting Church in Australia, Queensland Synod*” (the **Churches Submission**) prepared by the Presbyterian Church of Queensland and the Uniting Church in Australia, Queensland Synod (the **Churches**), dated 28 March 2019.

The above documents pertain to our application (comprised of its **Original Application** dated 25 May 2018 and its further **Supplementary Application** dated 28 February 2019) (collectively the **Application**) to the Honourable Attorney-General of Queensland to exercise her discretionary powers under section 131 of the *Associations Incorporation Act 1981 (Qld)* (**AI Act**) to:

- recall and cancel the Letters Patent issued to the PMSA under the *Religious Educational and Charitable Institutions Act 1861* (**RECI Act**); and

- require the PMSA to apply for incorporation under the AI Act in lieu thereof.

(This document is referred to hereinafter as the **Submission in Response**).

1.2 **Part 2** of this document sets out Beyond PMSA’s response to the PMSA’s submissions. **Part 3** of this document sets out Beyond PMSA’s response to the Churches’ submissions.

2. Prefatory Comments

We make the following prefatory comments in respect of the Respondent Submissions:

- 2.1 Fundamentally, the PMSA is not (and does not consider that it should be) accountable to the very community that it serves. The PMSA Submission clearly makes this point and defines community stakeholders as “customers”. Ultimate “accountability” in this context is only possible by consumer decisions to leave PMSA Schools or to change future enrolment decisions. This is not a basis upon which a successful educational endeavour can be founded in 21st century Australia.
- 2.2 Community expectations and deference to school governing bodies were vastly different decades ago. That is no longer the case. The PMSA has failed to grasp this. Its Submissions demonstrate a clear absence of self awareness on this important issue, but more worryingly, a complete absence of concern for it. They continue to confuse bare minimum “legal” compliance and “self-styled” reform as a strategy for successful community engagement and enrolment growth. Our Application is founded on so much more than that. Our Application appeals for a legal remedy. It is built on genuine legal

arguments. But it is also borne of emotion and a genuine concern and love for PMSA Schools – their history, cultures, traditions and the values that they instil.

2.3 The Applicant is in fundamental disagreement with the PMSA and the Churches about the reform pathway that they are forging in response to the material crisis that the PMSA created in 2017. This Application is the culmination of a battle of ideas, but it is a battle defined by our love of PMSA Schools. We are proposing solutions which we submit are supported by the wishes of the overwhelming majority of the PMSA Schools community. We assert that these wishes are being ignored by the PMSA and the Churches, and that the true reasons for this are **not** founded on legal or operational complexities associated with change.

2.4 The Applicant submits that a change to the Respondent’s basis of incorporation presents as a very **low** level of difficulty on the reform spectrum. The greatest challenges that the Applicant sees in the process to deliver material and authentic improvement in the governance of PMSA Schools are:

- (a) removing “pride” as the primary hurdle to constructive discussions on reform solutions; and
- (b) encouraging the PMSA Board to move away from its unreasonable and sole reliance upon external legal advice which is clearly, by design, severely constrained in its scope and does not take into account the much broader and essential organisational implications of change¹.

¹ Which the Applicant submits are critical and overwhelming beneficial from a whole-of-business perspective.

2.5 The Applicant submits that these are the “true” hurdles to a transition to a new basis for incorporation. The nature of the Respondents Submissions clearly demonstrate that the PMSA Board and the Churches have deeply entrenched fears about undertaking what frankly should be a very common and uncontroversial corporate transition process. The Applicant submits that such a transition will have considerable upside benefits, including the restoration of much needed “corporate trust”.

2.6 In making its submission, the Respondent disingenuously argues that the Applicant is pursuing some form of “political” agenda against the PMSA. It is not, and this is a cheap argument to make. The Applicant has absolutely nothing to gain from this Application being granted. It seeks no role in the future governance of PMSA Schools. The Applicant and its thousands of supporters simply seek genuinely effective and transparent structural reform that can ensure a sustainable future for PMSA Schools and remove the continuing need for Beyond PMSA to exist at all.

2.7 Our Application has at its core issues of trust. Not once in the PMSA’s submissions has it even mentioned this absolutely critical issue which is the foundation of the community’s concerns. It refuses to acknowledge firstly that there has been any breach of trust. Secondly it asserts that those who are calling upon it to initiate deeper reform have no standing to do so, and by implication it therefore has no need to address this fundamental failing at all. We submit that it must, because the significant “privilege” that accompanies the right to exist under Letters Patent is founded entirely upon trust, - trust in a the legal sense, and most definitely in a moral sense.

3. The Application

- 3.1 Turning to the matter of our Application and the Respondent Submissions, the Minister will, upon review of this document, observe that the Applicant has systematically addressed all of the legal arguments which the Respondent claims would challenge a successful transition to an incorporated association. If the Minister accepts the Applicant's responses below, then the only issue that remains is the question as to whether the Respondent is entrenched in a systemic governance failure with the only solution to the ensuing business crisis being re-incorporation of the Respondent under section 131 of the AI Act.
- 3.2 The Applicant submits that the Minister can only make a considered decision on that question with the benefit of objective information about the true financial position of the PMSA and PMSA Schools. The Applicant submits that the Respondent Submissions (including those of the Churches) on the issue of dysfunction and financial stability are selective and wholly inadequate to support objective analysis. The financial information relied upon by the Respondent does not even relate to the critical periods in question.
- 3.3 The Applicant therefore reiterates that it is essential for the Minister or the Office of Fair Trading to make a request of the PMSA to consent to a by-arrangement audit by the Auditor-General within the reasonable parameters outlined in Beyond PMSA's Supplementary Application.
- 3.4 If the Respondent does not agree to consent to a by-arrangement audit by the Auditor-General on the very reasonable terms proposed by the Applicant (which would ensure the costs of the audit and guarantee the preservation of information which the PMSA

perceives to be extremely confidential to it)², then the Applicant respectfully submits that the Minister can not simply accept the selective financial information offered up by the Respondent in support of its position as conclusive, and as a consequence, is left with two alternative courses of action with regard to a decision on this Application:

- 3.4.1 The Minister must accept the Applicants submission that the PMSA is in systemic failure based upon the Respondent's unwillingness to submit to independent and objective verification of its claims (**Alternative 1**) ; or
- 3.4.2 The Minister must advise both the Applicant and the Respondent that the Minister is **unable** to form a view on the merits of the submissions of either party to the Application and is therefore unable to make a decision at all (**Alternative 2**).
- 3.5 If the Minister decides that Alternative 2 is the only course available as a consequence of the evidentiary barrier that is being maintained by the Respondent, then this Application can proceed no further unless the Minister elects to petition the Supreme Court to intervene. We submit that the consequences of Alternative 2 would be less than optimal for the PMSA because of the cloud of uncertainty that would continue to deeply undermine trust in it. It would recklessly complete the PMSA's "self inflicted" brand destruction and it would have a detrimental flow-on impact for all PMSA Schools.

² Unlike, for example, other highly successful independent schools operating in the same market – including most Grammar Schools in Queensland.

3.6 Beyond PMSA attempted good faith discussions with the PMSA in mid to late 2018 (at their initial request). We abided by every assurance that we provided to the PMSA in that period with regard to curbing ongoing public commentary on the failings of the PMSA’s reform agenda in the genuine expectation that an alternative basis for incorporation would be authentically investigated and placed on their agenda. The PMSA did not respectfully reciprocate by taking the simple exploratory steps requested. The hurdle that we requested the PMSA to clear was set very low. It was not achieved due to the very dysfunction that we assert exists both within and above the PMSA. We assert that the congregational factionalism that exists within and above the PMSA Board meant that a simple decision to investigate options and to announce an intention to review its basis of incorporation within a reasonable timescale³ could not even be put to a vote.

3.7 The outcome was a considerable period of “clear air” and advantage to the PMSA. It was a complete waste of time for the Applicant. We submit that the PMSA’s approach to engagement still focuses on a ‘tick a box’ compliance methodology, at the expense of authenticity. Sadly, that will never change under its present basis of incorporation.

3.8 Regardless, significant public interest in this Application and the debate over “organisational trust” was subsequently re-enlivened with over 700 people attending and viewing our most recent Town Hall meeting late last year and more than 1000 viewing it within the first 48 hours- proving that the community is still acutely interested in this very important issue. Our support base remains exceptionally strong with over 4000 genuinely active followers. This demonstrates that the level of community support and

interest in our governance reform aims remains exceptionally high. The issue is not going away any time soon.

3.9 Despite the PMSA’s rebuff to Beyond PMSA last year, we remain willing to enter into good faith discussions with them regarding the very reasonable and responsible alternative Proposal for the PMSA to incorporate as a corporation limited by guarantee (as contained in Appendix 3 to our Supplementary Application). It is a model that many other highly successful independent schools across Australia operate under. (Frustratingly, these include both Presbyterian and Uniting Church Schools). The Churches are therefore, clearly, very familiar with the benefits of this model. We submit that all of the Respondent Submissions on the “practical” impediments which negate a consideration of our Proposal are fundamentally undermined by this fact.

3.10 We would be grateful for the assistance of the Office of Fair Trading in facilitating such discussions, if possible. Of course, that will depend upon the willingness of the PMSA to participate and to approach those discussions “authentically”. We will only participate if they give appropriate and genuine reciprocal assurances. Given the low hurdle offered to them last year and the tone of the Respondents Submission, we retain a very low level of confidence that they will agree to do so.

³ (without mandating a decision one way or the other).

Thank you for the opportunity to provide this Submission in Response.

Yours Sincerely,

Beyond PMSA



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Part 2: Response to PMSA Submissions

Item	PMSA Submission	Beyond PMSA Response
PART A – RESPONSE TO RECALL OF LETTERS PATENT ISSUE		
	Introduction	
1	<p>The argument that Beyond PMSA (“Beyond”) makes in its “Key Submissions” is set out across 14 pages and 16 subheadings of the Submission dated 25 May 2018 (“the Submission”) and is supplemented by the Supplementary Submission dated 28 February 2019 (“the Supplement”). The crux of the Application is in the first two of the 16 submissions in the Submission. They are:</p> <ul style="list-style-type: none"> • The PMSA is entrenched in systemic governance failure under a dysfunctional joint mission of the Uniting and Presbyterian Churches. (Submission 1) • The problems besetting the PMSA and PMSA Schools can not [sic] be solved under any option for governance reform that “co-exists” with Letters Patent due to the PMSA’s unique and dysfunctional structure⁴ (Submission 2) 	The Applicant agrees with submission 1.
2	The remaining 14 Key Submissions in the Submission, scaffold these first two submissions and set out why the Minister should exercise her discretion to both recall the Letters Patent and compel incorporation under the Associations Incorporations Act (1981) (AI Act) s.131.	The Applicant agrees with submission 2.

⁴ The Application for the Exercise of the Honourable Attorney General’s Discretion Pursuant to Section 131 of the Associations Incorporation Act 1981 (Qld) to Recall and Cancel the Letters Patent of the Presbyterian and Methodist Schools Association (herein ‘the Application’) Page 12.

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3	<p>If this is a correct understanding of the Application then the Minister should not exercise her discretion to recall the Letters Patent and compel PMSA to incorporate, unless:</p> <p>a. PMSA is entrenched in systemic governance failure; and, b. The failure is due to the dysfunctional joint mission of the Uniting and Presbyterian Churches; and, c. No solution to that governance failure exists other than recall of the Letters Patent.</p>	<p>Submission 3 is only partially correct in its analysis, and is therefore incorrect. Fundamentally, our Application asserts that:</p> <ol style="list-style-type: none"> 1. The PMSA is entrenched in systemic governance failure. 2. The failure is due to dysfunction, but it is the unique “combination” of the existence of Letters Patent and the dysfunctional influence which sits both within and above the PMSA itself that is the core problem. The two issues are <u>not</u> mutually exclusive. The PMSA is overlaid by a joint mission that offers no single point of accountability that can effectively remedy the dysfunction within the PMSA or deliver important solutions within the reasonable timescales demanded of schools operating in a complex and competitive independent schools market. The PMSA is captive to the competing ideological and theological views of the Uniting and Presbyterian Churches. This is not a criticism. It should align with the religious values of those Churches. However, despite the assertions by the Churches to the contrary in their submission that they do not act as “shadow directors” they nevertheless hold a very real and powerful level of influence over the members of the PMSA Board who are appointed from members of the Presbyterian and Uniting denominations (with the exception of independent Board members, who must nevertheless also be members of the Presbyterian or Uniting Church or another denomination “<i>who has agreed in writing to uphold the education policies of both the Presbyterian and Uniting Churches</i>”).⁵ We submit that this influence exists over matters which fall outside the delivery of the Christian mission and clearly involves deference on important issues of governance, including Letters Patent (Importantly, that document does not reside with the Churches at all, but with the elected PMSA Board members from time to time. It is a tool for the delivery of the charitable purpose). We submit that there is very clearly a “factional” component to the functioning of the PMSA Board which affects its decision making processes. With respect, the written statement by the Churches (refer to Part 3 of this document) which points to agreement on their opposition to this Application does not of itself provide

⁵ See sections 5.4 and 5.5 of the *Constitution of the Presbyterian and Methodist Schools Association* issued at 10 December 2018.

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		<p>evidence of common agreement and proper functioning of the PMSA or the joint mission at all.⁶ We submit that this dysfunction adversely impacts on the ability of the PMSA to effectively respond to both operational matters and to broad and dynamic market challenges, including the self-inflicted challenges created by the PMSA’s own actions in 2017. The flawed and highly constrained organisational response has not only proved the existence of this dysfunction, but its drawn-out implementation over the last 18 months demonstrates its continuation. Nothing has been changed by the “Constitutional” reforms. If the Auditor General is permitted to undertake a by-arrangement audit of the PMSA and PMSA Schools, then we submit that the results of that audit will demonstrate the effects of the dysfunction (and the poor decision-making culture that it supports) on the financial “recovery” trajectory for PMSA Schools.</p> <p>3. No solution to the PMSA’s governance failure can co-exist with under a Letters Patent structure as a consequence of this unhealthy structural dynamic which has become entrenched, and which has been permitted to amplify, over many decades. The existence of the joint mission can not be removed, but the compounded risks associated with that mission operating under an incorporation structure which is not sufficiently transparent will provide a more solid foundation for the recovery of PMSA Schools because greater transparency and accountability will restore community trust.</p>
4	<p>If all of these three fundamental propositions cannot be made out then it is not necessary for the Minister to have regard to the remaining “Key Submissions”. We therefore focus on the recall of the Letters Patent in this section and these two submissions across the first two sections of this Submission.</p>	<p>The Applicant rejects submission 4. All of the key submissions support the first two submissions and are important issues which the Minister must take into account in her analysis of the Application as a whole.</p>
5	<p>The most significant additional contribution of the Supplement is the setting out of Beyond’s ‘summary of the key principals [sic] for the</p>	<p>The Applicant agrees that this is a significant additional contribution, however it was not provided as “part” of the Supplementary Application at all. Although attached at</p>

⁶ The Uniting and Presbyterian Churches have chosen to provide a joint “unified” statement of position in response to our Application which ultimately supports the Respondent’s position on its ability to function and denies that “*differing cultural, organisational and theological perspectives cannot adequately or appropriately govern together*”. (See page 1 of the ‘*Joint Submission of the Presbyterian Church of Queensland and the Uniting Church of Queensland, Queensland Synod*’ dated 28 March 2019). There are no deadlock breaking mechanisms in the current governance structure, and as a consequence, unless there is unanimous agreement at both PMSA Board level and between the Churches, PMSA Schools remain “captive” to the dysfunction.

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	proposed new corporate design' in a table titled: Beyond's Proposed New Corporate Structure for PMSA Group at Appendix 3.	Appendix 3 for convenience, it is an entirely separate document which was prepared specifically at the request of the Office of Fair Trading. The Respondent has clearly not read the document in sufficient detail to understand the basis upon which it was prepared, and continues this mistaken assumption through many later comments in its Submission. It matters not, the contents of the document attached at Appendix 3 of our Supplementary Application have been summarily dismissed by both the Respondent and the Churches. The Proposal has not been properly ⁷ considered at all by the Respondent, presumably because it would undermine its opposition to this Application and the existing reform pathway that it has "doubled down" on.
	The three premises of Beyond's case	
	Uniqueness ?	
6	Beyond's case is that the Letters Patent establishing the PMSA must be repealed. As there are approximately 450 other Letters Patent entities in Queensland, it is necessary for Beyond to show that there is something unique about PMSA which distinguishes it from the other 450 Letters Patent. Beyond begins by acknowledging this stating that Beyond: <i>... do not deny that some organisations may be capable of operating effectively and responsibly under a Letters Patent structure</i> ⁸	The Applicant has consistently maintained that organisations which "choose" to operate with sufficient transparency or which alternatively have the benefit of existing under a structure which has a single point of accountability, can operate responsibly under a Letters Patent Structure. We maintain that the PMSA exhibits neither of these indicia and is therefore unique. The Respondents' case is built upon an assertion that it is not uniquely different from other organisations operating under Letters Patent and, by this logic, any decision by the Minister to grant this Application will create a messy "problem" for the Minister. That is a political argument aimed at instilling fear. It is not a legal argument that is supported by the facts. The Applicant's submission is that the PMSA <u>is</u> unique. This Application is specific to the structural and factual issues underpinning it and has no relevance to any other organisation in Queensland.
7	Its first submission then is that the Letters Patent arrangements for PMSA are unique. It submits: that the PMSA is uniquely incapable of [operating effectively and	This submission is entirely incorrect in its analysis. The Letters Patent of the PMSA, of itself, is <u>not</u> unique. The Applicant has <u>never</u> asserted this. The Respondent has incorrectly structured its Submission to omit the key element of our argument which is

⁷ By "properly" we mean an analysis that is not comprised solely of a "legal" analysis of its core components, but of the broader business and organisational benefits.

⁸ Accompanying letter to the Application Page 2.

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	responsibly under a Letters Patent structure]. ⁹	that it is the “combination” of Letters Patent and the absence of a single unified point of accountability which makes the PMSA uniquely incapable of operating effectively and responsibly under a Letters Patent Structure. The consequence is increased RISK to PMSA Schools.
8	This statement conflates legal form issues and governance practice. Proper consideration of the issue requires attention first to the Letters Patent and the Constitution then to the operational role of the churches in the discharge of their governance responsibilities under the Letters Patent and the Constitution. We take these in order.	It conflates nothing. The two issues are inextricably linked for the reasons outlined in detail in our Application. Furthermore, the Respondent states in its Submission that the Churches have an “operational role” in the discharge of governance responsibilities under Letters Patent and the Constitution. The Churches, in their combined submission dated 28 March 2019, conversely assert that they do not act as “shadow directors”. These positions are contradictory. If the Churches perform an operational role, then this clearly points to a level of involvement beyond what would be regarded as usual in the context of “members” of incorporated associations. It points to a level of influence which clearly impacts on the functioning and decisions of the PMSA Board.
	<i>The Letters Patent itself and the Constitution</i>	
9	On a plain reading of the Letters Patent there is nothing unusual about the Letters Patent. Like all other Letters Patent, the document is a short letter issued under hand of the Governor incorporating a body of persons.	The Applicant agrees with this statement. The Applicant has never asserted that the PMSA’s Letters Patent of themselves are unique. See our comments on submission 7 above.
10	PMSA like other Letters Patent entities has, sitting behind the Letters Patent a Constitution. This Constitution of PMSA, like the Constitution of other Letters Patent is capable of variation and has in fact been varied over time and more recently. If the Constitution behind the Letters Patent of PMSA can be and has been varied, in a manner similar to others Letters Patent, then again PMSA is not unique.	The Applicant does not contest that organisations which exist under a Letters Patent structure utilise Constitutions, but this does not negate our arguments in respect of the unique dysfunction of the PMSA.
11	Critically, if the Constitution of PMSA can be varied to address concerns	Submission 11 is totally rejected by the Applicant. The Applicant has addressed this

⁹ Ibid.

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	<p>raised by Beyond then it is not necessary to repeal the Letters Patent. Rather Constitutional amendment may need to be undertaken but that is all. Beyond has not addressed this issue.</p>	<p>issue, and this is a fundamental aspect of our Application and the Key Submissions.</p> <p>The issue, and specific reasons for our rejection of this proposition has been addressed in our Application and in our Supplementary Application¹⁰. Our submissions support the fundamental proposition that Constitutional amendments, of themselves, are insufficient when the basis of incorporation undermines the trust which is required to be placed in the PMSA. There is no way to re-establish trust in the PMSA as an organisation by making unilateral Constitutional amendments. We submit that the nature and extent of the Constitutional amendments which the PMSA is proposing and which have now (conveniently) been hurriedly implemented over the last several months, are wholly insufficient to address the serious allegations of trust that are levelled at it by the community.</p>
12	<p>As will be shown later in this Submission at Part D, PMSA has moved to address concerns raised by Beyond through constitutional amendment. Beyond has not established that it was impossible for PMSA to make constitutional changes to address Beyond’s concerns in its Submission. This is an important threshold point. The PMSA with the agreement of the church has systematically, consistently and over a long period of time made amendments to the Constitution to adapt to changing circumstances..</p>	<p>The Applicant rejects this submission in its entirety.</p> <p>We submit that the recent Constitutional amendments are carefully selected and highly restrictive changes that exist only as a defensive strategy to the public challenge that confronts the PMSA as an organisation, and which the Respondent no doubt considers offers a convenient plank for defence as part of its Submissions in response to this Application.</p> <p>The Applicant submits that the 2018 Constitutional amendments were only announced and implemented after the Applicant lodged its original Application. Further, the Respondent’s assertions that they have undertaken “systematic” and “consistent” amendments to its Constitution over a “long period” of time to “adapt” to changing circumstances are self serving but ultimately, incorrect. The Respondent has changed its Constitution previously, but over its 100 year history, the progress on Constitutional reform has been glacial. By its own admission, the Respondent has confirmed that it has been “looking” at issues of Constitutional reform over the course of the last 5 years. Modern governance reform has clearly NOT been a priority for it until the onset of significant public pressure following the events of 2017.</p>

¹⁰ See Original Application sections 2.2.2.3 and 2.2.5 on pages 17 and 18 respectively. See Supplementary Application section 4.6 at page 8.

Item	PMSA Submission	Beyond PMSA Response
		<p>The Applicant has always maintained that, because the PMSA is uniquely dysfunctional, Constitutional amendments alone are an inadequate response to the present commercial crisis that surrounds it. However, additionally, the Respondent’s submission completely ignores an analysis of the nature of those attempted Constitutional reforms and does not establish that the measures are sufficient to rectify the failures outlined in our Application. They are in fact, we submit, grossly deficient. The Applicant submits that they are an aggregation of relatively minor changes “dressed up” to seem more material than they are. Further, the Applicant submits that there has been insufficient disclosure of what the Australian Institute of Company Directors (AICD) in fact recommended and what measures the PMSA “chose” to adopt from the AICD Report to meet its convenience.</p>
13	<p>The Beyond Submission devotes two parts, Parts 3 and 4 (pages 29 to 51) to first setting out the background regarding the Letters Patent and second answering the question of how recalling PMSA’s Letters Patent will solve the governance problems. In the Submission and the Supplement it does not, though, actually provide facts which amount to evidence upon which the Minister could act, nor does it set out for the Minister, arguably, the most important facts in either the Submission or the Supplement.</p> <p>We mention three of the most important facts that speak to issues at the heart of the Beyond submission.</p>	<p>The Respondent is attempting to overly simplify an extensive list of factual examples into a discreet list of key events or circumstances which must justify our Application. We have no intention of narrowing that list to suit the convenience of submission 13.</p> <p>The history of dysfunction of the PMSA is long and colourful, culminating in the outrageous events of 2017, for which no explanation or genuine apology has been given. Our Application was detailed and covered a large number of events and circumstances in support of systemic governance failures of the PMSA - but necessarily so. The allegations and factual examples were adequately and clearly set out in the Original Application under 5 headings. They do not require repetition here. As an aggregation of complaints they point to an organisation that operates under significant governance impairment and is characterised by a poor culture that has been, and continues to be, founded on an “adversarial” approach to community engagement, HR and risk management.</p> <p>The Respondent has not sought further evidentiary clarification of the long list of matters contained in our Application. It is open to the Minister to enquire of the Applicant, and we will provide, any further evidence in the form of witness statements or similar that the Minister considers is necessary to aid in her decision.</p> <p>With regard to matters underpinning our allegations about financial failings, we rely upon our statements in the Supplementary Application that the Respondent’s unique</p>

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		<p>position under its Letters Patent to withhold that information from independent, objective and confidential analysis both undermines the objective ability of the Minister to decide this Application and conveniently supports our arguments on the continued absence of trust in the PMSA as an organisation.</p>
14	<p>Beyond asserted as fact, incorrectly, that:</p> <p><i>Entities such as the PMSA which are constituted under Letters Patent are not “required” to be accountable to the stakeholders or the institutions under their ownership and control.</i></p>	<p>It is not an incorrect assertion at all. The PMSA have never considered themselves accountable to non-owner stakeholders. By the admission of the PMSA and its legal advisers in their Submission, community representatives are not entitled to quite a lot of information. Their very public statements and conduct over the course of the last 18 months blatantly demonstrates this. But our statement also implies that accountabilities are an issue of degree, and what is objectively, by reference to contemporary Australian governance standards, an acceptable level of accountability does not appear to equate at all with the PMSA’s view of the standard that it ought to apply to its own community.</p> <p>Our Application and the statement extracted by the Respondent in submission 14 highlights (in our view) the need for school Governing bodies like the PMSA to ensure that they are operating transparently and doing more than just meeting “bare minimum” legal requirements. Social expectations are shifting rapidly, and for a governing body in any school in Australia, it is their moral and ethical decisions to move beyond mere compliance that will define their leadership legacy. To put it simply, (and to paraphrase concepts from Mark Eggleton’s Special Report In the Australian Financial Review on 28 February 2018¹¹ the actions and decisions of successful school governing bodies in modern Australia need to pass the “Mum” test. In the wake of the Banking Royal Commission and the Royal Commission into Institutional Responses to Child Sexual Abuse, the Applicant thinks that it is appropriate and entirely necessary for all educational institutions to take a significant “step up” on governance. The fact that we entrust the care of our most precious resources (our children) to these institutions should be sufficient motivation for them to target the very HIGHEST standards of governance and compliance. We make no apologies for calling upon the PMSA to deliver “more” accountability than it is required to do under its Letters Patent structure. Letters Patent provides the PMSA with a “choice” that is not given to other</p>

¹¹ <https://assets.kpmg.com/content/dam/kpmg/au/pdf/2018/afr-special-report-rebuilding-corporate-trust-feb-2018.pdf>

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		<p>incorporated entities. But the right to have that “choice” demands that the organisation operates with “trust”. Whenever organisational trust is destroyed, a community can rightly characterise this as a serious governance failing.</p>
15	<p>Letters Patent entities like PMSA that are charities are required:</p> <ul style="list-style-type: none"> a. to be accountable in accordance with the terms of their constitutions; and, b. to report publicly through the Australian Charities Not-for-profits Commission to the public, including stakeholders. 	<p>Accountabilities under the PMSA’s Constitution do not include accountabilities to parents, students, staff, alumni, donors or friends of PMSA Schools.</p> <p>The PMSA’s mandated reporting requirements through the ACNC are minimal and for that reason are of little use to members of the PMSA Schools community. Until late 2018, the PMSA has never submitted individual PMSA School financial reports to the ACNC. It has actively maintained that it would not do so for reasons of “confidentiality” and “competitive advantage”.¹² It did not publicise the fact of disclosure of the 2017 Financial Reports and made no public commentary on their disclosure. Unless members of the community are minded to search for them, they are not transparently accessible. These financial reports are different from the “Annual Reports” listed on the PMSA website which contain very few useful details. Community members traversing the PMSA’s own website may be mistaken for assuming that this represents the only public disclosure of information for each school. Put simply, the disclosure of the 2017 financial reports for each school bares the hallmarks of a reactive “anomaly” in the 100 year history of the PMSA. The Applicant submits that it is reasonable to draw the conclusion that the disclosure was timed in response to this Application. The reports contain financial information for a period which pre-dates the immediate effects arising from the events of 2017. There has been no ongoing public commitment to continuous disclosure and there remains no requirement for the PMSA to disclose individual school reports like this in the future, <u>after</u> this Application has been decided.¹³ Perhaps this is why these reports have not been more broadly published outside of the ACNC website? Perhaps it preserves future “choice” for the PMSA because it does not create a readily observable precedent that can be questioned?</p>
16	<p>In Part 4 PMSA asserts as fact that by compelling PMSA to become an</p>	<p>Correct. We presume that the Respondent is attributing the statement to “Beyond</p>

¹² Neither of these propositions are accepted by the Applicant or the community it represents as valid reasons for non-disclosure.

¹³ The PMSA’s “Governance Update” published on its website for December 2018 has a heading “Reporting and Transparency” under which it simply made the following statement with no further details: “The PMSA is providing a greater level of transparency.” (See: <https://www.pmsa-schools.edu.au/library/files/Governance%20Reform%20Update%20181217%281%29.pdf>).

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	<p>association: Stakeholders will be entitled to access copies of the PMSA’s financial statements and the signed audit report by searching the register of incorporated associations. This would provide a significant improvement to transparency compared with current disclosure practices.¹⁴</p>	<p>PMSA” and not the ‘PMSA’?</p>
17	<p>The facts are: a. That the public generally, not merely ‘stakeholders’ are already entitled to access PMSA’s financial statements and the signed audit reports and have been able to do so since at least 2014;¹⁵ and, b. an examination of those public records show that there will be no improvement to transparency by compelling PMSA to become an association because PMSA already reports to a higher standard than is required for non-government schools. The decision by the PMSA to publish financial statements directly to ACNC in addition to the reporting requirements of the Department of Education and Training exceeds industry standards and expectations. This provides transparency of the activities and financial position of PMSA beyond regulatory compliance. c. PMSA’s annual reports provide very detailed financial information and Beyond relies on that information in the Supplement to advance its case but deny its veracity (even though the data is audited).</p>	<p>Beyond PMSA do not dispute that audited financial statements are prepared. The convenience of the PMSA’s assertions here ignore our arguments that the basis upon which those reports are prepared and the level of disclosure is, having regard to the inherent breaches of trust that have been perpetuated upon the community of Stakeholders in PMSA Schools, wholly inadequate.</p> <p>Special Purpose reporting standards and consolidated reporting in the context of a multi-school group where there are, and continue to be, clear examples of poor financial performance (by admission of the Churches in their own submission to our Application) and which does not provide a breakdown within and across individual schools has fed and encouraged a continual mistrust of the organisation.</p> <p>The Applicant submits that advancing an argument that the PMSA meets its legal obligations is an insufficient organisational response to the business challenges it currently faces and which have been exacerbated by its actions in 2017 and 2018. The business of the PMSA is a business of “trust” and “confidence”, precisely because of the nature of the undertaking that they pursue. The care, education and well-being of young children.</p> <p>We restate our comments in relation to financial disclosure set out in response to submission 15 above.</p>
18	<p>Third, in Part 4 of the Submission, Beyond submits, incorrectly at two levels, that: ... <i>an additional and important benefit of incorporation under the AI</i></p>	<p>Despite the Respondent’s assertions to the contrary in submission 20 below, the Applicant maintains that this statement is correct.</p>

¹⁴ The Submission page 38.

¹⁵ See ACNC Website for example of 2014 reports at: https://acncpubfilesprodstorage.blob.core.windows.net/public/7118c361-3aaf-e811-a95e-000d3ad24c60-bbe2c98b-26bd-4c05-b037-e0438afe2bd2-Group%20Financial%20Report-4ae32186-50b0-e811-a960-000d3ad24282-2014_PMSA_Financial_Report_for_ACNC.pdf.

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	<p><i>Act is that individual PMSA Councillors would have fiduciary obligations to all bodies; and members of the association and not merely to the particular Church that appointed it.</i>¹⁶</p>	
19	<p>An even stronger statement is made earlier that PMSA Councillors: <i>... are, by their legal nature, accountable to no- one because they arguably owe no fiduciary duties.</i>¹⁷</p>	<p>To clarify, that statement referred to the absence of accountability to anyone other than the Churches. PMSA Board members arguably owe no fiduciary duties to members of the PMSA Schools communities, including parents, alumni, donors and friends of the schools.</p> <p>Individual PMSA Councillors (including current serving PMSA Board members) have at times appeared to be under precisely that belief, via direct statements on that subject to members of the community who have approached the Applicant.</p>
20	<p>Both these statements are not a correct statement of the law. Persons in control of charities like the PMSA Board do owe fiduciary duties. Those duties are legally enforceable by the Attorney-General and in a variety of other ways.</p>	<p>Submission 20 is legally incorrect. The Respondent’s later arguments in its Submission directly undermine the assertion in submission 20..</p> <p>The issue is to “whom” the fiduciary duty is and should be owed. The fact that they are not owed to the stakeholders of PMSA Schools comprising parents, students, donors and past alumni is precisely the reason for our appeal to the Attorney General. The PMSA’s veiled arguments that those same members have no standing to bring this Application mocks the very essence of submission 20. The PMSA is not accountable to the community of people who provide it with the financial means to operate, or to the community to whom its is supposed to make provision for educational services. In that context, the very “objects” to whom its charitable and educational endeavours are to be delivered are ignored. The PMSA’s approach to defending the Application in this manner, aids in making this point very conveniently for the Applicant. There is no other way to interpret the Respondents position on this issue.</p> <p>It is not lost on the Applicant that, at the same time that the Respondent is asserting that the Respondents’ fiduciary duties are “<i>legally enforceable by the Attorney General</i>”</p>

¹⁶ The Submission page 36.

¹⁷ The Submission page 25.

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		<p><i>and it a variety of other ways”,</i> the Respondent is seeking to challenge not only the merits of the Applicants submissions, but also the ability of the Attorney General to both invoke and enforce the discretionary powers afforded to her under the AI Act to do precisely that. It is a contradiction.</p>
21	<p>A leading recent Australian authority that discusses the law of fiduciary duties does not suggest that legal form, in any way, frames the duty or its enforceability.¹⁸ The international jurisprudence on fiduciary duties in charities takes up the observations made in the leading Australian case just mentioned and goes further in a charity context. The Lord Chancellor explained in a recent English case why fiduciary duties extend not only to persons exercising functions like directors but also to persons involved in charities by virtue of their membership.¹⁹</p>	<p>This submission contradicts the arguments put forward by the Respondent in submissions 36 and 55 to 59 which characterise the position of parties other than the Churches as having “non-legal” rights which should not be recognised in any form which would give the Minister sufficient cause to consider the arguments put forward in this Application.</p> <p>The PMSA’s own position in response to this Application is therefore based on the fundamental assertion that not only does the community have no recourse to argue that fiduciary duties are owed to them in the operation and management of PMSA Schools which they fund and support, but that the only persons who “might” have recourse to be able to enforce fiduciary obligations (apart from the Attorney General as a matter of last resort it would seem) are the PMSA Board members and the Churches themselves. In other words, everyone other than the objects of their own undertaking.</p> <p>The Respondent can not maintain this submission and then simultaneously seek to rely upon contrary submissions which appear later in its response. Which position is it taking? We submit that it is clearly not the position that they assert is supported by the decision of the Lord Chancellor in The Children’s Investment Fund Foundation (UK) case.</p>
22	<p>Not only is it incorrect to say that “arguably no fiduciary duty is owed” ;it is also incorrect to say there is no-one capable of enforcing those duties. The leading Australian Charity law textbook sets out a whole section explaining why the court’s jurisdiction extends to entities even where an actual or inferred trust is not declared.²⁰</p>	<p>Enforcement is only relevant if the PMSA agrees that it owes a broader duty than just to its own Board members and the two Churches. Clearly it does not hold that position for the reasons stated in response to submission 21 above, and so the issue of enforcement for community stakeholders and the helpful assertion that the community’s interests are protected by the views of the author of this book is both</p>

¹⁸ Grimaldi v Chameleon Mining NL (No 2) [2012] FCAFC 6 (21 February 2012).

¹⁹ The Children’s Investment Fund Foundation (UK) case [2017] EWHC 1379 (Ch).

²⁰ G E Dal Pont (2017) The law of Charity Lexis Nexis Butterworths 327.

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		<p>semantic and illusory. It is consequently irrelevant to the dilemma upon which the Applicant’s claims for relief is founded. The PMSA’s very opposition to this Application on the ground of standing makes the case for the Applicant in response to submission 22. The issue of standing is dealt with by the Applicant later in this document.</p>
23	<p>Duties owed by PMSA Councillors are enforceable in Queensland by the Attorney- General either ex officio or ex relatione; that is, on the Attorney-General’s own motion or at the instigation of another person concerned that a charity’s assets were not being applied to the charity’s purposes.²¹</p>	<p>This is a very narrow scope for recourse indeed. Section 106(2)(c) of the <i>Trusts Act 1973 (Qld)</i> (as quoted by the Respondent in their Submission) states that a court application can be made under section 106(1) of the Trusts Act for an order to do various things in respect of a charitable trust. The Attorney General has standing to do so, as does “any person interested in the due administration of the trust”. That is an admirable statement of the position at law, but it ultimately has absolutely no relevance to the unique circumstances that we bring before the Attorney-General with regard to the PMSA.</p> <p>The PMSA’s own submission argues that the community of stakeholders that we represent has no standing or entitlement to information or to even seek the intervention of the Attorney General. If the Respondent’s submission on the issue of standing is accepted, then the statements in submission 23 are an academic exercise without an end point for the Applicant. These two positions are therefore a <u>further</u> contradiction in the Respondent’s arguments which conveniently supports the Applicants case.</p> <p>In summary, if the PMSA’s interpretation and position on this issue is to be accepted, then communities like ours who are impacted by organisations operating under Letters Patent have no recourse. There are no fiduciary duties. There are no protections. There is no one that can intervene on behalf of a concerned and affected community.</p> <p>If the PMSA were incorporated either as an Association under the AI Act or as a corporation limited by guarantee, then the construction of its membership, and the membership of similarly constituted organisations within its Group (outlined in our Proposal in Appendix 3 of our Supplementary Application) would create and embed</p>

²¹ A limited number of common law jurisdictions extended the Attorney-General’s power to approach the court to ‘any person interested in the due administration of the [charitable] trust’ Queensland is one of them: see, eg, Trust Act 1973 (Qld) s 106(2)(c).

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		<p>fiduciary obligations across a broader section of the community through representatives appointed to those Group entities from time to time. This is a fundamental plank of our Proposal and is a critical component of embedding the type of “trust” that the PMSA lacks (and which is in fact being prevented from being repaired and enhanced under the current Letters Patent structure).</p> <p>“Trust” is a central plank of our Application. It was barely mentioned in passing in the brief Submission by the Churches (See Part 3 of this document). It has not been mentioned at all in the Respondent’s own Submission, and yet we submit that this is the biggest commercial challenge threatening the sustainability of their organisation and PMSA Schools.</p>
24	<p>The ATO also exercises a de facto supervisory role, and the High Court decision in <i>Bargwana</i> is an example.²²</p>	<p>The ATO exercises a supervisory role of all taxpayers and taxpaying entities. This is uncontroversial, but the Respondent provides no context to it in submission 24, nor does it draw relevance to its arguments or the specific circumstances surrounding this Application and the relief sought by the Applicant.</p> <p>In the <i>Bargwana decision</i>, the Taxation Commissioner revoked the trust's tax exempt status ultimately because of irregularities in its administration which the Commissioner claimed meant that trust funds were not being applied exclusively for charitable purposes. Under s 50-60 of the <i>Income Tax Assessment Act 1997 (Cth)</i>, trust funds established in Australia for public charitable purposes are exempt from tax, but only where "<i>the fund is applied for the purposes for which it was established</i>". The matter went on appeal and was ultimately determined by the High Court which held that the relevant trust fund was not entitled to endorsement as an exempt entity. The High Court was of the view that the trustees had not applied the trust fund for the purposes for which it was established. The <i>Bargwana decision</i> serves as guidance for the consequences for tax exempt status due to non-compliance with a charitable purpose. It provides no additional relevance to the Respondent’s submissions.</p> <p>Further, although the ATO performs a supervisory role, the ACNC receives corporate</p>

²² FCT v *Bargwana* [2012] HCA 11; 2012 ATC 20-312; 82 ATR 273. The onus of proof shifts to the charity once a concern is raised: see Taxation Administration Act 1953 (Cth) s 14ZZK(b)(iii), considered in *Re Bicycle Victoria Inc v Commissioner of Taxation* (2011) 55 AAR 203, 246–7 [108].

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		<p>support from the ATO and since 2012 has effectively taken over the ATO's role in determining charitable purposes. Our comments in relation to the functional role of the ACNC in response to submission 25 (below) apply to our response to thus submission 24 to that extent.</p>
25	<p>The ACNC has very broad supervisory powers and takes a particular interest in breach of fiduciary duties. As it explained in its recent Street Swags inquiry:</p> <p>“The ACNC has a range of formal powers it can use, including warnings, directions, removing responsible persons, enforceable undertakings and revocation,” Mr Locke said.</p> <p>Street Swags Director Paul Daly confirmed he and his board were working to address the concerns raised by the ACNC.</p> <p>“The Board is acutely aware of its fiduciary responsibility to demonstrate good governance and stewardship,” Mr Daly said.</p> <p>“It is also aware of its legal responsibility at the highest level to comply with regulatory authorities and welcomes the ACNC’s assistance in meeting its compliance requirements.”²³</p>	<p>With respect, the “active interest” of the ACNC in the “Street Swags” case only arose after fraud charges were laid by the police against a member of that organisation, and that only occurred with the cooperation of the organisation itself to bring the issue to the attention of the ACNC in the first place. If the Respondents’ submission is that a breach of fiduciary duties is required to meet a “criminal standard” before the ACNC will take a more active interest, then we fail to see the benefit of the point that the Respondent is making in its assertion that it is apparently under “<i>detailed supervision</i>”. The case referred to provides no support to the Respondent’s arguments.</p> <p>We submit that the ACNC is effectively an “educator” of the charities sector and does not truly regard its function as a “regulator” even though it does have some limited regulatory powers. The ACNC adopts the “report once use often” approach. What this means is that it does not separately assess the reports that an entity submits and does not generally challenge issues such as whether the relevant entity is a “reporting entity” or not. This is because it expects the primary regulator (in most cases ASIC or the Office of Fair Trading, as applicable) to have already done so. We submit that there is an issue when there is no other “primary regulator” as in the case of organisations operating under Letters Patent. Further, the ACNC does not assess what information is already available about an entity and it does not audit or have any active level of oversight over what charities decide to disclose on the register. This can mean that mistakes are not corrected. There is a very clear regulatory gap that Letters Patent organisations operate within.</p> <p>The Respondent’s submission appears to be an argument that the existence of “any” fiduciary duty demonstrates accountability, and that “any” level of accountability translates to a sufficient cause to dismiss our Application. At the same time, the Respondent’s submissions elsewhere is that it owes no fiduciary duty or accountability</p>

²³ See: <https://www.acnc.gov.au/media/news/street-swags-takes-action-address-acnc-concerns>.

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		to those for whom its function and purpose are expected to be directed. That the Respondent is accountable to anyone “except” fee paying parents, donors and alumni” was the purpose of our statements extracted at submissions 14 and 19.
26	<p>At a more fundamental level Beyond misunderstands the nature of a Letters Patent charity and the duties the Board members owe. PMSA is not ‘owned’ by the churches in the way that Beyond frames its arguments.²⁴</p> <p>The powers of appointment vested in the churches are appropriate for a charity such as PMSA in a way that the commercial concept of ‘owners’ is not. This is not an issue of semantics. It is an issue that goes to the heart of the current arrangements. There are not changes that can be made that will replicate the current arrangement. The current Board members are not accountable to the Churches as members. They are fiduciaries entrusted with carrying out a charitable purpose. There are many persons to whom they are accountable but under the law the ultimate supervisor is not the churches but the Attorney-General as the protector of charities in Queensland. Furthermore, and for completeness, it ought be noted that Beyond offers no evidence whatsoever that Board members do anything other than properly discharge their duties as Board Members to PMSA. The suggestion that the Board members do not properly discharge their fiduciary duties but act at the behest of their nominees is completely rejected by the PMSA Board.</p>	<p>With respect, the PMSA IS engaging in disingenuous semantics with this statement. We are fully aware of the nature of ownership structure of the PMSA and have stated it clearly in our Application documentation.</p> <p>We are also aware of (what we assert is) a very obvious conflict between the public pronouncements about the PMSA’s accountabilities to the Churches and the very real role that the Churches DO play with regard to matters and decisions affecting the PMSA. Although the Churches are perhaps the only entities to whom the PMSA owes a fiduciary obligations, they made it clear in their separate (joint) submission that they do not consider that they act as “shadow directors” with regard to the PMSA (a term we might add that Beyond PMSA has never applied to the Churches).</p> <p>However, we submit that the PMSA does take detailed guidance from and defers to the Churches on a great many matters of importance, particularly in relation to the subject matter of this Application and the governance reform process that the PMSA has embarked upon.</p> <p>We have no doubt that the Churches may prefer to regard this type of engagement more benignly as a relationship akin to that of a “mentor” (or similar), but the influence and effect is the same. It is a matter of degree to assert that it equates to something akin to the concept of being a shadow director. We are loathe to assert that out of respect for the Churches, but the effect appears in many respects to be one and the same. Section 9 of the <i>Corporations Act 2001 (Cth)</i> includes in the definition of a director “...a person who is not validly appointed as a director if... the directors of the company or body are accustomed to act in accordance with the person’s instructions or wishes”. Whilst the PMSA is not subject to regulation under the Corporations Act, the definition is appropriate guidance for understanding the concept in practice.</p>

²⁴ The Submission e.g. 2.2.13.

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		<p>Additionally, the <i>Australian Charities and Not for Profits Act 2001 (Cth)</i> (“ACNC Act”) defines a director of a company²⁵ as: “(a) <i>If a company is incorporated – a director of the company, or an individual who performs the duties of a director of the company; or (b) If the company is not incorporated – a member of management of the company, or an individual who performs the duties of such a member; regardless of the name that is given to his or her position, or whether or not he or she is validly appointed.</i>”</p> <p>The legal position stated in the preceding column and which is extracted from the PMSA’s own submission may be the “intended” effect of the structure, but we submit that the reality is very, very different. Either the Churches and members of the PMSA Board are both confused about those roles and required legal separations, or they are disregarding them. The power of appointment and removal to the PMSA Board, the embedded controls and approvals required at the Church level within the PMSA’s own Constitution and the deference to Church views on matters of importance creates the above dynamic. The recent amendment to the PMSA’s own constitution to embed “visitation” rights for the Churches to the PMSA at any time and other amendments to provide for greater reporting obligations to the Churches, ironically completes the pathway.</p> <p>The refusal to consider the benefits of re-incorporation has necessitated this Application because of an inability of the PMSA to facilitate the simple matter of bringing the issue before its own Board for debate and a vote. We submit that is precisely due to the influence of the entrenched position of the Presbyterian Church in particular. We further submit that the very existence of, and apparent need for the Churches to be involved in a decision on Letters Patent evidences a role and involvement of the Churches that transcends the carrying out of a fiduciary obligation to deliver a charitable purpose. By the Respondent’s own logic their fiduciary obligation would be discharged if the Respondent can satisfy the Churches that a change to its basis of incorporation will not affect the delivery of the charitable purpose or otherwise impair the existence and objects of the trust. We submit that it will not.</p>

²⁵ (Under the ACNC Act, a company is defined in the Act as a body corporate or any unincorporated association).

Item	PMSA Submission	Beyond PMSA Response
27	<p>In summary, Beyond offers no evidence that because PMSA is a Letters Patent it experiences a lesser form of governance. To the contrary, when incorrect statements made by Beyond are examined, the evidence shows that the Letters Patent form of governance in both law and as practised by PMSA is at least equal to that of any other form of incorporation adopted by a charity. This is because it is the charity status that is critical, not the form of incorporation. Also critical and at a more fundamental level is the proposition that Beyond does not appreciate the nature of a charity and the inherent powers and duties of the relevant parties including the supervisory role of the Attorney- General.</p>	<p>All things are not equal. The Applicant and its thousands of active supporters and followers fully understand the very real limitations on governance that arise within organisations constituted under Letters Patent when those organisations make the conscious “choice” not to operate with sufficient accountabilities and transparencies expected of them in a modern governance environment. This is particularly apparent in the context of educational institutions which are, by their very nature, “high risk” governance environments. The PMSA has always had the “choice” to operate more responsibly and accountably. It has never taken up that choice. It continues not to do so in an authenticity productive manner.</p> <p>The form of governance “<i>as practiced by PMSA</i>” is wholly insufficient, and it’s style and manner of governance over many decades is <u>precisely</u> the reason why the events of 2017 occurred and why this Application was submitted. How many other organisations currently operating under Letters Patent in Queensland are facing the same level of community backlash over governance standards and similar applications to the Minister? The Respondent’s statement is frankly extraordinarily naive in this regard. The very existence of the PMSA’s current reform agenda is evidence of material dysfunction which has arisen due to equally material governance failures.</p> <p>The Applicant submits that the Respondent was and remains an organisation in crisis. It is forging ahead with a flawed reform agenda and “doubling down” on its implementation despite significant opposition to it and serious concerns over its effectiveness to resolve the continuing business crisis affecting PMSA schools. It is doing so in the mistaken belief that building and entrenching its new governance “architecture” will engineer a new relevance for the organisation and make dismantling it even harder. What the Respondent fails to appreciate is that no-one is talking about dismantling the PMSA any longer (there is an acceptance that it will remain as an ownership structure) – the community just wants a structure that will serve PMSA Schools in the best way possible. Replacing mistrust with genuine trust and genuine collaborative spirit across the entire PMSA Group is the only solution. That will never be authentically delivered under the current reform agenda. The current trajectory remains counter-productive to optimal outcomes and ultimately places the Schools at substantially greater risk in the market.</p>

Item	PMSA Submission	Beyond PMSA Response
		<p>Finally, the Respondent is totally incorrect when it makes the assertion that it is the “charity status” which is critical, and “not the form of incorporation”. This statement completely misses the entire point and purpose of our Application. The form of incorporation and the accountability structures that underpin it are vital to the effective and proper delivery of the charitable purpose. “How” the charitable purpose is delivered by an organisation is arguably just as important than the fact that an organisation has the legal “status” as a charity (if not more so).</p>
	<p><i>The joint mission of the Church and the allegation of ‘dysfunctionality’</i></p>	
28	<p>Beyond blames the ‘joint mission’ of the churches for the unique incapacity to operate effectively and responsibly under a Letters Patent structure stating that:</p> <p style="padding-left: 40px;">This is because the PMSA operates under a joint mission of the Uniting and Presbyterian Churches that is a highly dysfunctional²⁶ and which (unlike other organisations operating under Letters Patent) provides no single point of accountability.²⁷</p> <p>and:</p> <p style="padding-left: 40px;">The problems besetting the PMSA and PMSA Schools can not be solved under any option for governance reform that “co- exists” with Letters Patent due to the PMSA’s unique and dysfunctional structure.²⁸</p>	<p>The Applicant stands by this statement, but draws the Minister’s attention to the two elements of the statement extracted in submission 28 which the Respondent seeks to ignore in the construction of its arguments across submissions 28 to 30. The Respondent focuses on “dysfunction” (which we say exists both within and above the PMSA), but ignores the equally important aspect of the statement which refers to the absence of a single unified point of accountability which enables that dysfunctionality to exist and influence decision structures. The latter is an important structural component which is necessary for the claimed dysfunction to occur.</p> <p>The Applicant otherwise relies on the statements set out in response to submissions 7 and 8 above in response to submission 28.</p>
29	<p>The unique incapacity is so fundamental that Beyond submits:</p> <p style="padding-left: 40px;">... that there can be no valid structural or process reasons that can be advanced by the PMSA which would support a decision by the Minister:</p> <p style="padding-left: 80px;">(a) to refuse this Application.²⁹</p>	<p>Correct. The Applicant’s response to submission 28 applies in respect of submission 29.</p>

²⁶ Footnote 5 from accompanying letter to the Application: Details and examples of this dysfunction and its impact on the PMSA Council are set out in Part 5 of this Application.

²⁷ Accompanying letter to the Application Page 2.

²⁸ The Submission Part 2.2.2 and page 20.

²⁹ The Submission page 21.

Item	PMSA Submission	Beyond PMSA Response
30	<p>So Beyond has made proof of dysfunctionality a central plank of its argument and asserts as a fact that the oversight of the PMSA is dysfunctional. It does not, though, provide evidence to support this. The high water mark of this ‘evidence’ is only the assertion that the churches disagree.³⁰</p>	<p>The Applicant’s responses to submission 28 and submission 31 apply in respect of submission 30.</p>
31	<p>The evidence in relation to the churches is actually of unity. Beyond have not, and cannot, point to any example of the two churches ever publishing contrary views about the PMSA.</p>	<p>It would hardly be expected that the Churches would engage in an open discourse of public disagreement through publication of opposing views. That is not in the nature of Church organisations and the Respondent is well aware of that. ‘Silence’ and a desire not to present a public face of disagreement or misalignment on issues is an all too familiar response that many communities existing under the umbrella of Church run organisations regularly come to grips with.</p> <p>If the Respondent submits that the requisite evidentiary standard can only be established by the existence of “published” materials, an absence of such published material does not, conversely establish that no dysfunctionality or differences of opinion exist. It simply represents the choice that the Churches continue to make in how they will approach those issues. Most organisations operating under Letters Patent choose to operate in the same way.</p> <p>The Applicant submits evidentiary burden does not need to be established by presentation of published material or even a statement of alignment as the Respondent asserts. The Applicant has provided extensive submissions in response to the Churches statements on this issue in Part 3 of this document and relies upon those submissions in response to submission 31. The evidence of dysfunctionality is apparent from the relevant actions and at times, inaction, of the PMSA Board.</p>
32	<p>Most importantly the evidence provided by Beyond shows functionality.</p>	<p>The evidence provided by the Applicant does not support functionality at all. The</p>

³⁰ See the Submission page 30, Footnote 30 on page 36.

Item	PMSA Submission	Beyond PMSA Response
	<p>The evidence provided by Beyond itself establishes:</p> <ul style="list-style-type: none"> a. a consistent history, accepted by Beyond, of appointing persons to the board of PMSA including, it would seem, removing some persons where inappropriate behaviour is alleged;³¹ b. of engaging a mediator to support PMSA resolve issues;³² c. of amending the Constitution of PMSA from time to time;³³ and, d. significant financial success.³⁴ 	<p>Respondent’s assertions in that regard are taken selectively, entirely out of context and are wholly misleading.</p> <p>The Respondent’s submission in the preceding column paints an incorrect and entirely misleading claim that the Applicant considers that the PMSA is not only “functional” but “competent”. Our entire Submission refutes both of those propositions.</p>
	<p><i>Interim conclusion</i></p>	
33	<p>It follows that on its own material, Beyond has not satisfied the requirements it set itself. There is nothing in the Letters Patent which is unique. The Constitution can be, and has been, amended to address concerns. The evidence adduced by Beyond is scant and upon investigation supports the position contrary to that submitted by Beyond. The legal analysis of fiduciary duties and accountability undertaken by Beyond is not correct. In fact PMSA does report to a higher standard than required. It follows that there are not grounds for recall of Letters Patent nor for compelling PMSA to incorporate under the AI Act.</p>	<p>This is an incorrect assertion. The Applicant makes the following further submissions in response:</p> <ol style="list-style-type: none"> 1. The Applicant has never maintained that the Letters Patent issued to the PMSA are unique. The Applicant has already explained this in detail above. The Respondent’s assertion is misconstrued. The Applicant has always maintained that it is the PMSA’s own joint venture structure (and the divergence of accountability that its structure generates under a Letters Patent structure) that is unique. This is the cause of the damage and the cause of the continuing failure to correct the current market trajectory of PMSA Schools. 2. The Applicant completely rejects the assertion that Constitutional amendment alone can resolve the cultural dysfunction that affects the organisation and its sustainability. It is not a fiction that can be placated by surface level reforms. Again, the Applicant has already explained this in detail above. 3. The legal analysis of the fiduciary duties and accountabilities undertaken by the Applicant is correct. The Applicant has never asserted that the PMSA owes fiduciary duties to anyone other than the Churches. The assertion by the Respondent that the PMSA owes fiduciary duties to the Attorney General is

³¹ See the Submission Part 5.1, 5.2

³² See Part H.

³³ See Part D.

³⁴ See Part C.

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		<p>plainly negated by the nature of the objections framed in its response. In fact the Respondent’s arguments directly challenge the authority of the Attorney General to inquire into the PMSA’s standards and record of compliance in order to inform her decision. The Applicant’s argument has always been that the PMSA’s cultural dysfunction and limited accountability structure demands that it should owe fiduciary duties to a broader class of stakeholders, precisely for the reason that the deep erosion of trust in it has caused the current crisis within PMSA Schools. This can only be improved and guaranteed under a different incorporation structure.</p> <p>4. The PMSA’s problem is not whether it does or does not report to any particular standard at present, but whether the “culture” and “trust” crisis currently surrounding it demands that it must report to a much higher standard in order to repair the considerable damage that it has inflicted upon the reputations of PMSA Schools. The Respondent has made much of the argument that the Applicant’s motives in advocating for governance reform and the submission of this Letters Patent Application is to “force” the PMSA to do something that it does not wish to do, or to comply with higher standards than are presently required of it at law. We absolutely agree with that assertion, not because doing so is intended to “punish” the PMSA, but because it is necessary for the repair and future sustainability of PMSA Schools. If the PMSA continues down the path of “bare minimum” legal compliance then it can not possibly hope to repair the considerable damage that it has caused. Our arguments for much higher reporting standards are founded upon commercial and business imperatives. Our arguments for meeting higher standards are not made simply “for the sake of it” or for “political” objectives as has been insinuated by the Respondent. Beyond PMSA simply wants the best possible outcome and ongoing standards for PMSA Schools and we fundamentally reject that the current levels of reporting are adequate to restore the trust and confidence of existing and future fee paying parents and donors.</p> <p>5. It follows that the existence of the current crisis and the imminent trajectory of PMSA Schools under the current reform agenda does require urgent</p>

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		objective interrogation by the Auditor-General to inform any decision by the Attorney General to grant or dismiss this Application.
34	Next we address the relevant section under which the Minister is asked to act and factors that might inform the exercise of her discretion. We also comment on the impossibility of compelling company formation.	<p>The Respondents’ assertion that company formation is an “impossibility” is complete fiction. The Respondent’s entire submission is designed to do nothing more than provide illusory roadblocks to a transition to an alternate basis of incorporation. The PMSA is unique, but it is not so unique as to be able to employ the term “impossible” with regard to such a process. Such an assertion is either a disingenuous attempt to ignore the alternatives put before it because of a determination to reject reasoned debate, or worse, demonstrates a complete absence of competence to understand and implement the required tasks to achieve it. Other Presbyterian and Uniting Church Schools in Australia already operate under incorporation models.</p> <p>In any event, with regard to the last sentence of submission 34, to the extent that the Respondent has assumed that the attachment of our Proposal in Appendix 3 to the Supplementary Application was an attempt to ask the Minister to “compel” incorporation of the PMSA as a corporation limited by guarantee under the <i>Corporations Act 2001 (Cth)</i>, we have already stated above that this assumption is entirely misconstrued.³⁵ The Churches (in their joint independent submission) coincidentally appear to be operating under precisely the same misconception.</p>
PART B. THE TWO DISCRETIONS UNDER SECTION 131 OF THE ASSOCIATIONS INCORPORATION ACT		
	Introduction	
35	The Application by Beyond recognises that there are two discretions which are open to the Minister to exercise under section 131 of the AI Act. ³⁶ Beyond does not deal with each discretion separately. It is submitted that the exercise of powers of the Minister is quite different in each case and must be considered separately.	There are two limbs to the discretion in section 131 of the AI Act, but they are interdependent. Both discretions reside in the Minister. The exercise of the powers in each case is different, but they need not be considered separately. The Respondent offers no argument as to why they should, apart from advancing a series of arguments later in its submissions about why it is seemingly impossible for the PMSA to exist at all or operate effectively under any other basis of incorporation. We have addressed all of

³⁵ (presumably because the Respondent has not properly read the material contained in that document).

³⁶ The Submission Part 2.1.

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		<p>those arguments (both legal and practical) systematically.</p> <p>If the Respondent ceases to hold its Letters Patent then it must maintain incorporation by another means. If the Minister exercises the first discretion, then the Applicant is requesting that the Minister exercise the second discretion simultaneously. Unless the PMSA would prefer to “dissolve” and wind up its business rather than be compelled to re-incorporate, it makes no sense for the two discretions to be selectively exercised by the Minister.</p>
36	<p>We consider first legal issues then four practical examples of the likely impact if the Beyond Application was to be granted. A discussion of the concept of non-legal ‘stakeholder rights’ that the Minister is being asked to rely upon as the basis for granting the Application follows. There is then discussion of the need to consider the fact that like entities should be considered alike followed by a discussion of the one precedent decided by the Hon Paul Lucas. The section closes with the observation that the relief sought by Beyond in the Supplement titled Proposed New Corporate Structure for PMSA is beyond the power of the Minister.³⁷</p>	<p>No comments are necessary in response to this summary of the structure of the Respondent’s Submissions.</p> <p>The Respondent’s “observations” that the Applicant is seeking relief from the Minister to compel the model incorporation structure set out in our Proposal is entirely misconstrued – demonstrating that the Respondent has either not bothered to read the Proposal at all (and particularly the pretext material to the Proposal), or has completely failed to comprehend its purpose.</p> <p>As will be stated numerous times in response to similar statements throughout the Respondent’s Submissions, our Proposal was prepared at the request of the Office of Fair Trading, is entirely independent of our Application³⁸ and does not seek the Minister to impose it, as it is clearly understood (and has always been understood by the Applicant) that it is not within the scope of the Minister’s power under section 131 to do so.</p>
	<p>Legal Issues</p>	
37	<p>The exercise of the discretion to ‘recall and cancel any letters patent’ seems to be relatively straightforward. It does not require cooperation from any person. It could be exercised without reference to the second discretion. The Minister could recall the Letters Patent and leave it for</p>	<p>In submission 37, the Respondent seeks to assert the existence of two separate discretions under section 131 of the AI Act. One for the Minister and one for the Respondent. There are not.</p>

³⁷ Supplement Appendix 2 page 39.

³⁸ (and simply attached for convenience).

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	<p>PMSA to decide whether or not it wished to incorporate and if so by what method.</p>	<p>The Applicant submits that this is an incorrect interpretation of the discretionary power afforded to the Minister under the section. The Respondent’s submission ignores the basic precepts of statutory construction and the plain language of the section. The two limbs of section 131 are interdependent, and the language of construction of the second limb is plain. Section 131 does not avail the Respondent with a “choice” to apply, or not to apply, for incorporation under the AI Act in lieu thereof where the exercise of the discretion is being sought directly from the Minister by a party other than the RECI Act entity. If section 131 is invoked, then the Respondent must incorporate under the AI Act if the Minister directs it to do so.³⁹ There is no contradiction in this or any “compulsion” issue that needs to be resolved (as the Respondent asserts in submission 39 below).</p> <p>The only discretion available to the Respondent under the AI Act is whether or not it chooses to avail itself of the ability to apply to transition to a corporation limited by guarantee under section 106H. (We submit that the latter would ultimately be of greater benefit to both the PMSA and PMSA Schools in the long-run, however that pathway does not form the basis of this Application. Instead, it underpins our good faith Proposal which was attached in the Schedule to our Supplementary Application at the request of the Office of Fair Trading - and which has been all but ignored by the PMSA and the Churches despite the constructive endeavours applied to it and the time taken by the Applicant in framing it).</p>
38	<p>The exercise of the discretion to ‘require the Association to apply for incorporation under this Act’ seems more problematic. The discretion cannot be exercised alone. It requires the cooperation not only of PMSA but of all who must assist in the process of satisfying the requirements for eligibility set out in the AI Act, particularly sections 5 and 6.</p>	<p>On the contrary, it does not require the cooperation of the PMSA at all. That is precisely the point of the section. If it required the cooperation of the PMSA then it would not be a discretion that resides in the Minister but nothing more than a mere ability to “request”. The Respondents statement fundamentally misconstrues the powers afforded to the Minister under section 131. If the Respondents submission on this point is accepted then the Minister fundamentally has none of the discretionary powers contemplated in the section. We respectfully submit that the Minister would disagree with that proposition.</p>

³⁹ Unless, as stated in response to submission 35 above, the PMSA would prefer to dissolve rather than be compelled to re-incorporate.

Item	PMSA Submission	Beyond PMSA Response
39	<p>Taking section 5 first; there will be a need to find at least seven members for the new Association. The current board of PMSA is voluntary. There is not power to compel their services. Similarly the Presbyterians and Uniting Churches cannot be compelled to serve as members. There is a need for at least seven, not just two members. Beyond does not address this issue of how membership can be compelled. A company can have only one or two members. Perhaps recognising this challenge may be why Beyond seeks not associational but company form in the Supplement.⁴⁰ Suggesting a company addresses the membership number issue but does not, though, address the compulsion issue.</p>	<p>This is a concocted numerical argument of no merit and ignores basic elements of the Minister’s discretionary powers and the statutory construction of the AI Act. It is correct to state that any organisation that becomes an incorporated association under the AI Act must traverse the same Application and compliance requirements. No individual can be “compelled” to do anything, least of all to serve as a member of an association. However, we are not aware of any Incorporated Association in Queensland that has a particular difficulty meeting minimum membership number requirements to satisfy section 5. There are plenty of appointed representatives on PMSA School Councils who could nominate to fill membership positions. The Respondent also has 12 serving Board members on its own Board (some or all of whom could potentially transition into the roles of members of the Association as well). However that is not the real issue at hand. If the Respondent wishes to assert that it is far too difficult for a sophisticated institution such as its own to invite individuals associated with the two Churches to form the additional 5 members of the Association, then the solution before the Minister is a relatively simple one. The Minister has the very clear power under section 132(a) of the AI Act to exempt the PMSA from specified provisions of the AI Act. That could very easily include a regulation which exempted the PMSA from compliance with section 5 of the AI Act and only require it to have two members – ie., being nominated representatives from each of the Uniting and Presbyterian Churches.</p> <p>The Applicant thinks that such a small membership would be a very unproductive result for the purpose of the PMSA’s organisational reform because the community would favour an increased number to broaden disclosure and transparency. (Doing so would also significantly increase “trust”). However, if the Churches were uncomfortable with a perceived devolution of ownership or control, then the increased membership could easily be comprised of an additional class of “non-voting” members.</p> <p>With regard to the Respondent’s assertion that the Applicant “seeks not associational but Company form”, - ultimately this is very true. However, the Respondent has demonstrated a complete lack of understanding of the purpose for which the Applicant took the time to prepare the Proposal set out in the Schedule to its Supplementary</p>

⁴⁰ The Supplement Appendix 2 page 39.

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		<p>Application. Our Application for the Minister to require the PMSA to incorporate under the AI Act stands on its own because that is the only legal recourse open to the Applicant under the AI Act. The Applicant and the entire PMSA Schools community would be very satisfied if the Minister made a decision to grant our Application. However, the Respondent should be well aware that we were requested by the Office of Fair Trading to prepare a separate Proposal as a basis for further discussion for a more mature and modern form of incorporation. One that we viewed as providing the optimal advantage for PMSA Schools moving into the 21st Century and beyond.</p> <p>The Respondent further submits that our Application suffers from some form of deficiency because it does not address the issue of “compulsion”. This assertion is misconstrued, but we have already dealt with the flawed compulsion argument above. The Churches already effectively serve in the capacity of members of the PMSA. If the Churches choose not to appoint members to a newly incorporated entity or seek an exemption under section 132(a), then this would produce an absolutely ridiculous outcome for PMSA Schools. There seems no responsible purpose to this argument. Is the Respondent suggesting that the PMSA would refuse to continue the charitable enterprise with they have been entrusted for the last 100 years by not facilitating such appointments in “protest” against change? Surely this would amount to a refusal to adhere to the Minister’s decision and comply with the requirements under the AI Act? If that is the Respondent’s submission, then it represents a direct challenge to the authority of the Minister under the AI Act and a pre-emptive breach of a Ministerial order. For an organisation that continually asserts that it acts in compliance with the law, this would also be a very curious and visibly offensive position to taken in front of an already furious community.</p>
40	<p>Turning to section 6; Beyond does not address the challenge the Minister will confront if PMSA puts the vote for conversion to an association to the meeting as required by section 6(1) and the vote is not carried by at least three quarters of the PMSA Board. The Minister does not have any power evident in the AI Act, nor it would seem, from elsewhere, to disregard the requirements of section 6(1) and incorporate the new association anyway. Nor can the Minister compel PMSA Board members to vote in accordance with the direction of the Minister so as to ensure</p>	<p>It is not necessary to address this issue at all. The Minister’s discretion is not contradicted by section 6(1) of the AI Act, nor should it be read down. Section 6(1) is in fact overridden by the discretionary powers afforded to the Minister under section 131. If it were not, then the purpose and intent of section 131 could never be fulfilled. It is submitted that this was not the intent of legislators when the provision was drafted. Should the Respondent’s submission therefore be viewed as a preemptive decision not to comply with the Minister’s direction to re-incorporate, but rather to dissolve in some form of “protest”. The challenges put forward by the Respondent in submission 40</p>

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	<p>that there is compliance with section 6(1). It follows that Beyond has not explained how the Minister will overcome the challenges embedded in section 6(1) if a compulsory conversion stance is to be taken by the Minister as submitted by Beyond.</p>	<p>defy proper statutory construction and are illusory. No issue of compulsion arises.</p>
41	<p>These issues compound when the Minister considers the need for a Constitution for the new entity. The Minister will have to draft the constitution that the Minister is to impose upon the new entity. The Minister will need to determine the rights of the churches and the other new members. The Minister will have to decide very specific issues such as what protections (such as insurance or indemnities) will be afforded to the management committee (if any) under the imposed constitution. These are but some of the challenges that Beyond has not addressed.</p>	<p>The Minister does not need to draft a new Constitution for the PMSA at all. This assertion is entirely incorrect and based on a misunderstanding of the discretionary powers afforded to the Minister under section 131 of the AI Act.</p> <p>Even the Applicant in its Original Application and Supplementary Application acknowledges that the development and adoption of a Constitution is entirely a matter for the PMSA and its members (whatever it's basis of incorporation). The Respondent either completely misunderstands the steps required to be taken as part of a change to the basis of its incorporation, or submission 41 is intended to create a fear in the Minister that she must expand her function and impose an operational construct upon the PMSA. This is patently ridiculous and unnecessary. That is not the function of the Minister and her advisers and it has never been a submission by the Applicant that it should.</p> <p>Submission 41 even implies that members of the management committee of the PMSA should hold apprehension that they may not have control over the protections that should be afforded to them through indemnities or insurances under their own Constitution. Clearly the PMSA has a lot of work to do on Constitutional reform and will require competent, independent and objective advice to do so successfully, but it has never been suggested that that process should be externally devolved. We submit that the starting point should be the "Model Rules" for an Incorporated Association that already exist and are endorsed by the Office of Fair Trading. They are freely available and readily utilised.</p> <p>Submission 41 is yet another example of an unhelpfully misleading submission that seeks to create a "fear" in the Minister. It does nothing to advance the Respondent's case or improve their arguments which are very transparently designed to challenge reasonable change as an "impossibility". Sadly, this is a very familiar and continuing narrative that is being peddled to the PMSA Schools community.</p>

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42	<p>It is submitted, consequently, that in reality, it is impossible to exercise the second discretion (to require incorporation as an association) without the willing participation of the churches and PMSA. These issues apply similarly to a compulsory conversion to a company limited by guarantee – which is the preferred option in the Supplement. We turn to that next.</p>	<p>The issue of compulsion and the requirement for the willing participation of the PMSA and the Churches in the context of the second discretion has already been addressed by the Applicant. (See our response to submissions 37 to 40 above, and submission 43 below). The Respondent’s submission on this point is totally incorrect and ignores the proper construction of the discretion in section 131.</p> <p>The Applicant has never made a submission that there can be a compulsory conversion of the PMSA to a corporation limited by guarantee. This issue has been repeated multiple times in this document by the Applicant and will not be further agitated here. The Respondent has completely misconstrued the purpose of the separate Proposal attached in Appendix 3 to our Supplementary Application because it has clearly not bothered to read and understand it.</p>
43	<p>The AI Act makes no provision to require a Letters Patent to apply for incorporation under the Corporations Act 2001 (Cth). It is submitted that the Minister simply cannot, as a matter of Law, require PMSA to comply with this submission in the Supplement in so far as it seeks a ‘proposed new structure’ that involves the formation of any (Beyond suggests nine) corporations under the Corporations Act. The AI Act authorises the Minister to ‘require the association to apply for incorporation under [the AI Act]’. It permits an association or Letters Patent to apply for conversion to a Company under the Corporations Act 2001 (Cth). But the Minister does not have power to compel such an incorporation under the AI Act under s.131 nor on any other basis including s106H of the AI Act to which Beyond refers.⁴¹ The Supplement does not address this issue of lack of compulsory power.</p>	<p>Again, the Respondents submission on this point completely misconstrues the purpose of the Applicant’s Proposal for a separate basis of incorporation as a corporation limited by guarantee under the Corporations Act. The Applicant has made it abundantly clear in its Supplementary Application that the Proposal set out in the Schedule to the Supplementary Application was a discussion document for a new state design proposal for the PMSA, and for that reason is completely <u>separate</u> to our Application. It was submitted in good faith for consideration and constructive discussion at the request of the Office of Fair Trading.</p> <p>It is for the PMSA to decide if it will completely dismiss all of the constructive work undertaken to prepare that Proposal (which was done at the request of the Office of Fair Trading) and simply decide to oppose our Application and march on with its own flawed reform process. No issue of compulsion arises in respect of the Proposal, and the suggestion that it does clearly demonstrates that the Respondent has not bothered to read and understand our Supplementary Application and the context of the separate Proposal. Had it done so, then submissions 42 and 43 would not exist. Fo that reason, our Supplementary Application does not need to address the issue of “lack of compulsory power” that the Respondent asserts.</p>

⁴¹ The Supplement page 31.

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		<p>The fact that the Respondent appears not to have read our Supplementary Application and the accompanying Proposal in detail (or in context) underscores the complete disinterest that the PMSA and the Churches continue to have in exploring any reform trajectories that are not of their own design, even when instigated by impartial regulators like the Office of Fair Trading. Again, this is an issue of continuing disappointment for a genuinely concerned community that is eager to assist in delivering a successful governance structure that can embed genuine trust and collaborative endeavour.</p>
44	<p>In the section explaining the ‘proposed new structure’ in footnote 93 there is reference to Jane Power’s PhD⁴² as if it is to give guidance. It does not. Power makes no reference to Letters Patent and does not give guidance on how the Minister might compel conversions. She references the Queensland AI Act once and it is to identify the insurance related obligation in section 70. What Power does do is highlight the issues identified below which we mentioned in the discussion of the judgement of Justice Ann Lyons. Power points to the 2003 decision of Justice Hamilton in <i>Metropolitan Petar v Mitreski</i>,⁴³ as authority for the proposition that mere change of legal form to incorporation under an Associations Incorporations Act (in that case NSW) did not address the more fundamental underlying charitable trust issues that needed to be considered.</p>	<p>The context and relevance of Submission 44 is completely lost on the Applicant. The reference to Jane Power’s PhD thesis in our Proposal document (attached at Appendix 3 to the Supplementary Application) was used in the context of an example of organisational structuring and how the issue of “reserve powers” under a group structure ought to be responsibly approached. It ought to have been abundantly clear that this was the purpose for the reference. It was never referred to in support of our broader assertions regarding Letters Patent. The Respondent even admits that Power’s thesis does not refer to the Queensland AI Act nor does it refer to the issue of Letters Patent. We agree. That was never the purpose of the reference. The Respondent’s quite random selection of this footnote reference is to advance its own argument for a completely different purpose.</p> <p>The Respondent has misquoted Powers thesis to support its statement that the decision in <i>Petar v Mitreski</i> is authority “<i>for the proposition that mere change of legal form to incorporation under an Associations Incorporation Act...did not address the more fundamental underlying charitable trust issues that needed to be considered.</i>” Powers thesis says nothing of the sort. At page 171 of Power’s PhD thesis, she clearly advocates for consideration of incorporation structures for congregational schools and states: “<i>Congregations considering incorporation as an option for future governance and property ownership would therefore need to seek legal advice on which is the more appropriate form for their particular circumstances. The larger the school, or group of</i></p>

⁴² Jane Power (2015) *Courage to move beyond the past: Common law and canonical structures for the governance of Australian congregational schools in the 21st century* <https://researchonline.nd.edu.au/theses/110/>.

⁴³ *Metropolitan Petar v Mitreski* [2003] NSWSC 262, [96].

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		<p><i>schools, the more likely it is that incorporation under the Corporations Act will be appropriate rather than under the AI Act or AI Bill.”</i></p> <p>At pages 201 and 202 of her thesis Powers goes on to specifically refer to the decision in <i>Petar v Mitreski</i> as follows: <i>“The incorporated association may have property vested in its own name, subject to any trusts relating to the property. The association, not its members unless otherwise provided by the rules, has an interest in its property. The real or personal property previously held by a person or persons for the previous unincorporated association vests automatically in the new incorporated association subject to any trust holding property for the previous body.”</i>⁴⁴ In <i>Metropolitan Petar v Mitreski</i>, Hamilton J considered property originally held on trust by an unincorporated association that then became incorporated under the <i>Associations Incorporations Act 1984 (NSW)</i> and determined that <i>‘the subsequent vesting of the property in the incorporated Association did not affect the subsistence of the trust.’</i>⁴⁵ <i>If the congregation owns the property on which a school stands, that land will not automatically vest in the incorporated school. Congregations will need to determine what property they wish to transfer to the new incorporated body. Any property currently held on trust by a different body will remain held on trust but by the new incorporated association for the same purposes as the original trust. If some other vesting of the property is required, the congregations should seek legal advice in relation to the existing trusts.”</i></p> <p>At page 202 of her thesis Powers states that <i>“The powers of the incorporated association in property matters are quite extensive, enabling a school to carry out all its usual functions.”</i> Power then goes on to list out those functions in detail and also notes at page 203 of her thesis that <i>“An incorporated association may, unless its rules otherwise provide, act as trustee and accept and hold real and personal property upon trust.”</i></p> <p>Submission 44 raises an incomplete and selective argument that is not supported by</p>

⁴⁴ Associations Incorporation Act 1987 (WA) s 11; Associations Incorporation Bill 2014 (WA) cl 18 (the section is slightly reworded but is a change in ‘form rather than substance’: Explanatory Memorandum, Associations Incorporation Bill 2014 (WA) 8.

⁴⁵ *Metropolitan Petar v Mitreski* [2003] NSWSC 262, [96].

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		<p>the report that it refers to or the case that it quotes. The Applicant never used the reference to Power’s PhD thesis in support of its arguments in the original Application or its Supplementary Application with regard to Letters Patent and the case for transition to an Incorporated Association (although as a robust academic report it could have). That last point is largely irrelevant however, because it is very interesting to note that in seeking to rely upon the same PhD thesis to support its own submission, the Respondent has conveniently ignored the author’s conclusions at page 212, where she stated: <i>“Incorporation under the AI Act, and the AI Bill when enacted, endows a school with a recognisable legal entity and is a suitable option for congregations seeking a new legal structure for their schools. ‘[T]he practical difficulties faced by unincorporated associations provide a strong incentive for an association to incorporate once it acquires substantial assets or its activities affect persons other than its members.’”</i> In that regard her comments that there is a clear incentive for schools and school bodies to transition to an incorporated structure where they have substantial assets <u>or its activities affect persons other than its members</u>. In the present case, the activities of the PMSA very <u>clearly</u> affect a great many more people than those who could be regarded as its current “members” and the only entities which the PMSA (by its own admission elsewhere in its own submission) considers as its stakeholders⁴⁶. We submit that the broad practical responsibilities that the PMSA has (and which have evolved and devolved to it over 100 years) to a very large community of affected people requires the intervention of the Minister so that the responsible commercial and ethical step of transitioning to a more accountable corporate structure can occur.</p> <p>Submission 44 also creates a a peremptory fiction that challenges the entire purpose of the AI Act and the foundation for transfer of RECI Act corporation to Incorporated Associations under Part 11, Division 2 of the AI Act. The argument submitted by the Respondent effectively challenges the utility of any RECI Act corporation changing the basis of its incorporation by virtue of the transfer mechanisms provided under section 106H of the AI Act, despite the fact that many forward thinking charitable organisations have already taken advantage of the the process when the AI Act was introduced. Although the mechanism under section 106H does not form the basis of this Application, the existence of that process and its utilisation in the past by many</p>

⁴⁶ A continuing and confounding stance having regard to the storm of controversy that has surrounded the PMSA for almost two years, precisely because of this position.

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		<p>charitable organisations to change their incorporation refutes the merits Respondents' submission. Further, the judgement in <i>Metropolitan Petar v Mitreski</i> and his Honours reasoning in that case were specific to the wording of the relevant NSW legislation (being the <i>Associations Incorporation Act 1984 (NSW)</i> and the <i>Associations Incorporation (Amendment Act) 1992 (NSW)</i>) and the specific basis upon which the trust was settled and the manner in which the relevant assets were vested in the unincorporated association in that case. We submit that the decision in that case offers no useful guidance to the Minister for her deliberations on this Application.</p>
45	<p>In addition to these fundamental issues under the AI Act, there are more complex questions of charity law. In December 2016, in a matter involving questions regarding the reconstituting of Queensland Community Foundation, Justice Ann Lyons explained the criteria that must be satisfied if the basis upon which charitable assets are held is to be changed. Among issues to be considered is whether the use of the power would destroy the 'substratum' of the charitable trust.⁴⁷ We make only two observations on this issue although others could be raised. First, it is unlikely to be contested that the assets held by PMSA are held for some charitable purpose and so the law of charities will be enlivened. Second, this submission by Beyond invites consideration of the difficult legal questions associated with the distinction between an express charitable trust and an entity that holds assets for the pursuit of charitable purposes.</p>	<p>This is a novel roadblock engineered to defeat the Applicant's Application. Unfortunately, for the Respondent, submission 45 has absolutely no relevance to the issues in the present case, nor the relief being sought under section 131 of the AI Act.</p> <p>The Respondent has raised "<i>complex questions of charity law</i>" and in particular whether, if the basis upon which charitable trust assets of the PMSA are held is changed, whether the use of the Minister's power in this instance would "<i>destroy the substratum of the charitable trust</i>". The Respondent advances no arguments that such a proposition will hold true in the present instance, merely a suggestion in submission 46 (below) that there "<i>could</i>" be "<i>challenges in complying with the law of charities</i>" if the Minister were minded to consider granting the Application "<i>in some form</i>". We submit that the absence of detail on the specific challenges that the Respondent asserts are likely to occur and which (presumably), in the Respondent's view, would be "<i>incapable</i>" of being reasonably resolved invites the Minister to dismiss submission 45 in its entirety.</p> <p>It has never been contested by the Applicant that the assets that are held by the PMSA are intended to be held for a charitable purpose, or that the PMSA holds those assets on trust for the Churches. However, the Respondent's reliance upon principles that are apparently supported by the decision of Justice Lyons in <i>Public Trustee of Queensland and trustee of Queensland Community Foundation (QCF decision)</i> is not only flawed, but largely irrelevant to the present factual circumstances. That case concerned a variation to a Trust Deed arising from a necessary tax compliance issue and the</p>

⁴⁷ Public Trustee of Queensland as trustee of Queensland Community Foundation, Re [2016] QSC 276 (15 December 2016) [37]-[40].

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		<p>principles set out in the decision related specifically to the terms upon which that specific Trust Deed was constructed.</p> <p>The Respondent has presumably formed the conclusion that changing the basis of the PMSA's incorporation must necessarily require a variation to the terms of the charitable trust. It does not. Equally, any argument that a change to the basis of the PMSA's incorporation (under legislation that is designed to enable the proper and transparent functioning of charitable organisations) would somehow defeat the charitable purpose of the PMSA is incorrect.</p> <p>The Respondent seeks to draw parallels between consequences arising from the relief being sought under this Application with the conclusions in the QCF decision. Justice Lyons did consider and make findings in that case relating to whether a proposed amendment to the terms of a Trust Deed for QCF by its trustee (The Public Trustee of Queensland) could destroy the substratum of the Trust Deed of the QCF. However, her Honour ultimately reached her own conclusions on the facts of the case and the wording of the particular Trust Deed, declaring at [40]) <i>"I agree with the submission of counsel for the applicant that the changes proposed to be made in the description of the purposes are within the substratum of the trust constituted by the Deed. As the proposed changes are directed to the continuance of all charitable purposes they do not offend the rule against perpetuities."</i></p> <p>Accordingly, unless the Respondent is asserting that a change to the basis of its incorporation should inevitably require fundamental changes which would affect the continuance of its charitable purpose, we fail to see the relevance of the submission at all. If the Respondent has concerns that this may transpire then it would be appropriate that either the Respondent or the Attorney General make an application under section 106 of the Trusts Act 1973 (Qld) for appropriate direction from the Courts. In our view, even if sub-trusts are established within the PMSA Group (in whatever group corporate structure that is ultimately determined or agreed upon) we disagree that a change to its charitable purpose will transpire at all - unless the Respondent is suggesting by its submission that it would take the opportunity to amend its own objects?</p>

Item	PMSA Submission	Beyond PMSA Response
46	<p>Beyond has not commented on these issues. We anticipate that the Minister could find significant challenges in complying with the law of charities if she were minded to consider granting the Application in some form.</p>	<p>We submit that the “<i>significant challenges in complying with the law of charities</i>” espoused by the Respondent as a consequence of a change to the basis of its incorporation to an incorporated association are non-existent. Our comments in response to submissions 44 and 45 above more than adequately address this point and the flawed legal arguments underpinning them.</p>
	<p>Practical Matters</p>	
47	<p>Turning to some of the practical matters embedded in the proposed compulsory incorporation of a new entity, we identify significant challenges that potentially prejudice PMSA, its staff, families and donors. Consider the following four examples related to PMSA’s engagement with third parties:</p> <ul style="list-style-type: none"> a. Government funding authorities; b. The Australian Charities and Not-for-profits Commission and the Australian Taxation Office; c. Contracts with parents for the education of their children; and d. Bequests to PMSA. 	<p>There will be no challenges arising from the transition to an incorporated association which would prejudice the PMSA, its staff, families or donors.</p> <p>The Applicants comments in response to submissions 48, 49, 50 and 51 below adequately and systematically address the underlying implications of the list of potential “catastrophes” outlined in submission 47a to d in the preceding column. No further detailed explanation is required.</p> <p>We submit that submissions 47 to 51 articulate nothing more than a series of imagined and unsubstantiated adverse practical challenges for the PMSA and employees of the schools. They should be dismissed by the Minister entirely unless the Respondent can provide specific examples of the nature and extent of these adverse challenges and under what circumstances they will occur.</p> <p>The Applicant submits that none will be found to exist, and in the alternative if any implications do arise, then they would be administratively minor and entirely manageable without broader adverse implications to the PMSA or the wider PMSA Group.</p>
48	<p>The Minister would be dissolving the entity which has all of the present funding arrangements in place and would be requiring a new entity to apply to the funding authorities for the funding formerly made available to the Letters Patent body that was PMSA. Beyond has not considered in the Submission or the Supplement whether the funding authority would be able to reallocate the funds, or whether due process would require the equivalent of a fresh tender/application for funds which would be</p>	<p>Submission 48 completely mis-characterises the nature of the PMSA’s transition to an incorporated association.</p> <p>The Respondent’s arguments that the change to the basis of the PMSA’s incorporation will result in the PMSA as an entity being “dissolved” is a incorrect and has no basis in law. It therefore no merit as a submission that supports the Respondents objections. A re-incorporated PMSA is not a “new entity” that emerges from a “dissolved” entity.</p>

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	<p>available not only to PMSA but all (competitor) schools.</p>	<p>The PMSA as a legal entity continues to exist and the Applicant submits that, administratively, the separate acts of cancellation of Letters Patent and incorporation under the AI Act would logically occur simultaneously.</p> <p>There is ample legislative support for how this transition would be regarded by the Courts, and the Minister needs to look no further than section 106M of the AI Act and section 601BM of the Corporations Act.</p> <p>Section 106M of the AI Act deals with the effect of a transfer of incorporation authorised under Division 2 of Part 11A of the AI Act. Although that Division relates to voluntary transfers by RECI Act corporations to a corporation limited by guarantee under the <i>Corporations Act 2001 (Cth)</i>, the Applicant submits that a transition initiated by the Minister by exercise of the discretion under section 131 of the AI Act must logically be treated in exactly the same way. Section 106M states: <i>“On the transfer of the incorporation of a RECI Act corporation, as authorised under this division: (a) the RECI Act corporation stops being incorporated as a RECI Act corporation; and (b) the letters patent issued to the RECI Act corporation under the repealed Religious Educational and Charitable Institutions Act 1861 are taken to be cancelled from the day of the transfer.”</i> The notes to section 106M specifically refer to section 601BM of the Corporations Act on the issue of guidance as to whether (amongst other things) a “new entity” is created consequent upon the transfer occurring.</p> <p>Section 601BM(1) of the Corporations Act 2001 (Cth) sits within Part 5B of the Corporations Act which deals with registration of bodies corporate that are not companies or corporations sole. It states that: <i>“(1) Registration under this Part does not: (a) create a new legal entity; or (b) affect the body's existing property, rights or obligations (except as against the members of the body in their capacity as members); or (c) render defective any legal proceedings by or against the body or its members.”</i> [Emphasis added].</p> <p>However, there is still <u>further</u> statutory basis for this argument. Section 22(1) of the AI Act gives very clear guidance on the treatment of trust property following incorporation of an association under the Act. Relevantly, that section states: <i>“(1) On incorporation of an association: (a) property held for the association or its objects,</i></p>

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		<p><u>whether on trust or otherwise, becomes property of the incorporated association; and (b) the provisions of a trust that applied to the property immediately before incorporation continue to apply.</u> [Emphasis added]. Section 22(2) goes on to state that: “(2) The operation of subsection (1)(a): (a) does not affect a covenant, contract or liability that applied to the property before the association’s incorporation; and (b) relieves a person who held the property for the association or its objects, whether on trust or otherwise, from: (i) liability or accountability for the property; or (ii) being bound to see to the application, distribution or appropriation of the property.” There is clearly a preservation of existing trust structures and trust property in the incorporated association following completion of the transaction.</p> <p>It is therefore submitted that the above characterisation of the transition which would be given effect by the exercise of the Minister’s discretion under section 131 of the AI Act will clearly not adversely impact the PMSA in the manner claimed by the Respondent. The basic precepts of corporate law and the laws of associations will apply. Contrary to the Respondent’s submission, no “dissolution” of the PMSA will arise upon a decision by the Minister to exercise the discretion under section 131 of the AI Act.</p> <p>The Applicant further submits that issues of disclosure to “competitor” schools associated with a need for a “fresh tender” for application to a relevant funding authority for funds would simply not arise, but even if it did, we fail to see why that should be of concern to the Respondent if it is operating in accordance with the law and continues to enjoy the benefits of the extremely “robust” financial and enrolment position that it claims.</p>
49	<p>The Australian Taxation Office and the Australian Charities and Not-for-profits Commission would need to consider afresh whether or not the new entity was entitled to registration as a charity and which, if any, tax concessions, would be available and under what circumstances. In this context, the drafting of the Constitution imposed upon the charity by the Minister and the entitlement of members could be critical. In the time between when the Letters Patent was revoked and the new entity was granted any tax concessions, consideration would need to be given by</p>	<p>For the reasons outlined above, the Applicant submits that no “new entity” is created by the transition. Accordingly, all existing registrations and concessions ought to remain in place. They do not need to be “considered afresh” by the ATO or the ACNC.</p> <p>It is submitted that even if any issues do arise in respect of the existing registrations and concessions as a consequence of the transition (which is disputed) then these issues are likely to be minor and could be adequately managed by appropriate pre-discussion with the ATO and the ACNC in the context that the change is the result of an</p>

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	<p>the Minister as to the impact of this upon not just PMSA, but the staff at the schools which might enjoy some form of fringe benefits tax or other tax concession.</p>	<p>administrative transition, not a dissolution and subsequent “creation” of a new legal entity. We submit that the only logical basis upon which any trigger should occur for the ATO or the ACNC to review current registrations and exemptions is if there is a change to the objects and charitable purpose of the PMSA. That is not the purpose of section 131 of the AI Act and can only occur through deliberate action by the PMSA.</p> <p>With regard to the Respondent’s submissions on the drafting of a new Constitution, we submit that a new Constitution will NOT be imposed upon the PMSA by the Minister. The suggestion that it will is incorrect and demonstrates a concerning lack of understanding by the Respondent of the both the authority and role of the Minister under section 131, and the processes to be adopted under the AI Act. The proposition that the PMSA’s role in its own governance decisions post re-incorporation will be “non-existent”, so to speak, is entirely imagined and has no basis in law. If it were minded to so choose, the PMSA’s existing Constitution could, unfortunately, be utilised as a basis for transitional rules of the association. However, we submit that the Model Rules that has been approved for use by incorporated associations by the Office of Fair Trading under the AI Act would be a reasonable starting point from a drafting perspective. We submit that this document, with moderate amendment by the PMSA would more than adequately address any of the PMSA’s immediate concerns.</p> <p>The Applicant challenges the Respondents’ submission that the tax treatment and entitlements of the PMSA (and even the staff at PMSA Schools) will adversely change post-transition. They will NOT, unless the Respondent is suggesting that it will make use of the event to implement a fundamental change to the purpose and nature if its business ?</p>
50	<p>Consider also the contractual relationship between PMSA and parents, for the education of children. For each student there will be a contract of enrolment. If the Minister repeals the Letters Patent of PMSA, those contracts will be also unenforceable by the parents and of course unenforceable by PMSA. The new entity and the parents will be required to establish fresh contracts for each student. The submissions made by Beyond leave open the possibility that not all parents will be cooperative but even if they were, the hours involved by both the new entity and the</p>	<p>For the reasons outlined by the Applicant in response to submission 48 above, issues of unenforceability with respect to enrolment contracts simply do not arise. Fresh enrolment contracts are not required. There is not even a requirement for the PMSA to change its name for contracting purposes which might affect existing enrolment contracts. The AI Act contains a specific provision in section 33 which allows an incorporated association to apply (for a minimal fee) for an exemption from the requirement to include the word “incorporated” in its name.</p>

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	parents would be substantial, and in the circumstances, unnecessary.	
51	<p>Finally, consider the effect upon all of the Wills drafted but not yet in operation which make bequests to the Letters Patent body, PMSA. There will be practical difficulties imposed upon the new entity to access bequests made to an entity that has been wound up by the Minister. If a court application is necessary to secure the bequest then funds that otherwise would be available for the education of students would be wasted on unnecessary legal fees.</p>	<p>Beyond PMSA takes exception with the statement that the grant of Application would result in additional legal costs “<i>that would otherwise be available for the education of students</i>”. We submit that the PMSA has supported an entire industry of legal services for many many decades, born of an aggressive and unnecessarily adversarial approach to HR and stakeholder management. To raise this argument in the context of an Application which ironically has, as its end objective, a result which will improve trust and positive engagement with community, and improve the prospects of bequests being made as a result, is disappointing and disingenuous.</p> <p>In issues of probate, executors and the Courts will look to intent in giving effect to bequests. In any event, we maintain our submission that the Respondent’s arguments that the change to the basis of the PMSA’s incorporation will result in the entity being “dissolved” and consequently creating issues with the perfection of past or future bequests is a nonsense that has no basis in law and therefore no merit as a submission that supports the Respondents objections.</p> <p>Changing legal structures is not an uncommon occurrence in corporate Australia, nor is it a foreign and untrodden path in the not-for-profit sector. It happens regularly. As a business changes and grows it is quite often necessary for it to consider changing its legal structure and therefore the basis of its incorporation. In the case of the PMSA, we submit that, for a variety of objective reasons, the change is totally necessary to preserve and grow its business. Although the PMSA may potentially need to alter some registrations and licences (which we doubt), it will NOT be “wound up” or dissolved as a consequence of such a change. The Respondent’s assertions that this will occur as a consequence of a change to a basis of incorporation are entirely incorrect and have no basis in law.</p>
52	<p>Set out above are only four examples of some of the challenges that would be involved at a practical level if the Letters Patent were to be recalled. The multiplication of these challenges can easily be foreseen when consideration is given to the different government agencies, regulatory authorities, contractors and donors with whom PMSA is in</p>	<p>This issue has already been adequately dispensed with.</p> <p>Submission 52 is rejected in its entirety by the Applicant for the numerous reasons outlined above. The submission is continuing a construction of non-existent roadblocks to the exercise by the Minister of the discretion afforded to her in Section 131 of the AI</p>

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	legal relations.	Act, should she be minded to do so.
53	<p>Beyond acknowledges, at least in principle, that there are practical challenges with implementing its submission in the following terms:</p> <p><i>It is inevitable that incorporating the PMSA under the AI Act will necessitate additional reforms to the structure of the PMSA and PMSA Schools, and whilst we agree that some of the requirements to achieve that may involve complexity and take time to implement, these are not insurmountable challenges. The necessity to implement structural and governance reforms presents challenges to the PMSA that are, in substance, no different or more complex than the challenges faced by many other organisations undertaking transformational change, provided that the process of change is managed by a capable and diligent team of professionals. We submit that any counter-arguments which the PMSA may make about the complexities or challenges that incorporation under the AI Act would create are illusory are misleading and characterise a “lazy” approach to reform. We submit that the end benefits will outweigh any short to medium term investment of time and effort to implement them. We therefore submit that there are no material and plausible disadvantages to granting this Application.⁴⁸</i></p>	<p>The Applicant continues to stand behind the accuracy and reasonableness of that statement. We have never suggested that the reform of the PMSA will be free from necessary effort and diligence. However, our comments (and the context of the statement extracted by the Respondent from our Application) were directed to the practical challenges which will be faced in dealing with the dysfunctional and laborious internal politics and processes of the existing PMSA and Church decision structures rather than the specific external “challenges” and roadblocks being proposed by the Respondent in its submissions (which have already been discussed above).</p>
54	<p>The four examples offered are ‘material and plausible disadvantages’ not ‘illusory’. PMSA is not “lazy” in its approach to reform. It is submitted PMSA has considered these issues more thoroughly than Beyond.</p>	<p>The Applicant completely rejects this submission. For the numerous legal and practical reasons outlined above we have no hesitation in submitting in reply that the 4 “examples” produced by the Respondent are neither material nor plausible disadvantages.</p> <p>The solution currently offered by the Respondent through its current reform agenda is not only lazy (because of the essential elements of reform that it continues to ignore) but it has also been an incredibly wasteful and inefficient application of expensive resources to implement. It has not had (and will never have) the dramatic effect required to rapidly restore market sentiment that is so desperately needed.</p>

⁴⁸ The Submissions Part 2.2.16.

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		<p>Furthermore, the Respondent continues to draw annual dividends from PMSA Schools, which are necessary to support the PMSA’s own operations and re-enlivened corporate “expansion” plans, without a demonstrated value proposition or measurable KPIs. The continuing losers in the equation are PMSA Schools.</p> <p>With regard to the Respondent’s final statement about its own thoroughness in assessing these issues we submit that:</p> <ol style="list-style-type: none"> 1. The Respondent has in fact not been diligent in its consideration of the issues at all (for the reasons outlined above); and 2. The Respondent has only bothered to investigate the potential for “hurdles” and challenges at the expense of exploring potential organisational “benefits”. <p>The four examples listed by the Respondent represents a much shorter list than the Applicant was expecting to receive. We presume that those four examples represent the “most” material concerns of the Respondents which could arise if it were required to reincorporate, otherwise the list would have been structured differently or would have been considerably longer. As we believe that we have comprehensively dispatched them, we would gladly invite the Respondent to issue any number of additional examples of reform hurdles that it perceives may exist for further commentary and considered solutions by the Applicant.</p> <p>The Applicant submits that a change to the Respondent’s basis of incorporation presents as a very low level of difficulty on the reform spectrum. The greatest challenge that the Applicant sees in the process to deliver material and authentic improvement in the governance of PMSA Schools is removing “pride” as the primary hurdle to constructive discussions on reform solutions. The next biggest challenge is encouraging the PMSA Board to explore the possibilities of constructive change under a new incorporation structure and to move away from adherence to advice which is severely constrained in its scope.</p> <p>These are the “true” hurdles to a transition to a new basis for incorporation because the PMSA Board quite obviously has deeply entrenched fears about undertaking what</p>

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		frankly should be a very common and uncontroversial corporate transition process with considerable upside benefits to the restoration of “corporate trust”.
	Stakeholder Rights	
55	Beyond submits that irrespective of the law and obligations on PMSA to report publicly in various regards, there is a particular class of persons called ‘stakeholders’ who have a particular class of ‘rights’ to which the Minister must have regard. According to Beyond’s submission it seems the Minister must act to give effect to these ‘stakeholder rights’ even though the stakeholder rights are not legal rights.	<p>Under a Letters Patent structure it is clear that no-one other than the Churches has rights which are directly enforceable against the Respondent. The Churches are the only established beneficiaries under the charitable trust.</p> <p>However, the Respondent is charged with the delivery of a charitable purpose to a group of persons other than the Churches. That group is the members of the PMSA Schools community. The Respondent therefore has both a legal and an ethical duty of trust to the members of the PMSA Schools community who have a legitimate interest in the administration of the trust. This issue is discussed in more detail in the Applicant’s response to submission 56 (below).</p>
56	PMSA submits that the Minister must, in the discharge of her ministerial responsibilities, turn her mind to particular legal rights and whether or not her assistance is required to ensure that citizens’ legal rights are protected. Beyond cannot legitimately ask the Minister to act in accordance with ‘stakeholder rights’ which it designs.	<p>The Applicant is not “designing” rights to which the Minister must have regard. Submission 23 makes the case concisely for the Applicant. The Respondent made the point (correctly) in the footnote to that submission, that <i>“a limited number of common law jurisdictions extended the Attorney-General’s power to approach the court to ‘any person interested in the due administration of the [charitable] trust’ Queensland is one of them”</i>.</p> <p>Section 106(2) of the <i>Trust Act 1973 (Qld)</i> was referenced in support of that statement. Section 106(2) of the Trusts Act clearly establishes a right of members of the PMSA Schools community to approach the Minister to seek protection of their rights. Those community members have their interests represented by the Applicant. (Issues of standing of the Applicant are discussed later in this document in respect of the Respondent’s challenges on that point).</p>
57	In contrast with the ‘stakeholder rights’ to which Beyond refers PMSA, parents and the churches have legal rights that must be considered also. PMSA’s legal rights include a right to remain incorporated in accordance with law for so long as it is solvent and otherwise compliant with the law. Parents are legal stakeholders (through their contracts with PMSA)	The Respondents own submission acknowledges the existence of rights in “parents” at least and concedes that “parents” are legal stakeholders through their enrolment contracts with the PMSA (although this appears to contradict its earlier statement in submission 55).

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	<p>whose legal rights would be profoundly impacted by a recall of the Letters Patent. Their right to have their children educated by PMSA in accordance with their agreed terms would be dissolved if PMSA were to have its Letters Patent recalled. The Churches have a legal right to appoint councillors in accordance with the Constitution of PMSA as established by them. Those rights would be affected by any change of form.</p>	<p>The assertion by the Respondent that the legal rights of parents would be “<i>profoundly impacted by a recall of the Letters Patent</i>” is totally incorrect. The Respondent makes further claims of this nature in submission 50. This issue was adequately addressed in our response to that submission.</p> <p>At the same time as acknowledging the legal rights of parents, the Respondent seeks to separate the interests of “parents” from some other nebulous form of ‘stakeholder rights’ which the Respondent seems to attribute to the Applicant, but which it claims has no legal status which should be recognised by the Minister.</p> <p>The Respondent therefore attempts to characterise the Applicant and its members as an ‘alien’ third party that has no valid interest in the administration of the charitable trust. That characterisation is preposterous for the following reasons:</p> <ol style="list-style-type: none"> 1. The interests of the Applicant and parents are identical because the interests and views of the overwhelming majority of parents (amongst other PMSA Schools community stakeholders such as alumni and donors) are represented by the Applicant. 2. The Respondent can not provide evidence which contradicts this because the Applicant’s membership is comprised of current parents, donors and alumni. 3. The incorporated vehicle was formed for the purpose of pursuing governance reform on behalf of members of the PMSA Schools community and is a valid entity to bring this Application for that reason alone. <p>The above position is further clarified in our response to submission 58 (below).</p>
58	<p>As a matter of law there is not a legal right in third parties (stakeholders) such as Beyond to compel PMSA to reconstitute. The Application to the Minister could perhaps be characterised as the exercise of a political</p>	<p>The members of the Applicant comprise parents, donors and friends of PMSA Schools. The Applicant’s standing to make this Application is demonstrated by this fact alone, without the requirement for further argument or evidence in support⁴⁹.</p>

⁴⁹ Although it ought to be more than apparent from the 2000 signatures in support of its petition that was lodged with the moderators of the Uniting Church and the Presbyterian Church in December 2017 and its continuing number of followers and supporters.

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	<p>right. It follows that, at best, Beyond’s assertions of ‘stakeholder rights’ are sourced in some non-legal (or non-equitable) origin. In the discharge of her legal duties it is submitted that the Minister can only have regard to legal rights. She cannot, it is submitted, have regard to Beyond designed ‘stakeholder rights’ to revoke a Letters Patent as they are at best only political.</p>	<p>There is absolutely no validity to any argument that those supporting and following the Applicant can be random “third parties” with no genuinely held interest in or connection to PMSA Schools. In submission 57 the Respondent recognises that “parents” have legal rights that must be considered. Presumably however the Respondent does not consider that this extends to the right to question the PMSA or to approach regulators or the Minister for relief?</p> <p>Finally, to assert that the Applicant has somehow “designed” stakeholder rights for “political” purposes is disingenuous at the extreme. It misleadingly suggests that the Applicants objectives are to surpland or replace the PMSA or to “take over” the PMSA or PMSA Schools. Nothing could be further from the truth. The Applicant’s objectives are:</p> <ol style="list-style-type: none"> 1. The attainment of a workable and trustworthy governance structure that will benefit PMSA Schools in the 21st century; and 2. To repair the massive damage caused to PMSA Schools by the Respondent’s actions in 2017.
59	<p>If the Minister were to act to recall the Letters Patent she would be doing so on the basis that non-legal stakeholder interests, that is, non-legal rights, trump the legal rights of PMSA, parents and the churches.</p>	<p>This is a nonsense. Beyond PMSA is comprised of followers and members who are parents of current students, Past Students, donors and friends of the Schools. Our collective responses to submissions 55 to 58 adequately address this issue.</p>
	<p>A Subsidiary issue – ‘Like entities should be treated alike’</p>	
60	<p>The logic behind Beyond’s argument, centred on lack of accountability, is that all similarly ‘unique’ Letters Patent should be recalled if they are like PMSA. Beyond acknowledges at least some accountability by PMSA – that is to the churches. Beyond does not acknowledge, though, that some, maybe many, possibly even most, of the 450 or so Letters Patent in Queensland operate like a charitable trust where there is not any accountability to third parties; beyond accountability applying under the general law. Some are not even charities. The Minister may need to</p>	<p>This does not matter if the Minister accepts that the Applicants submissions and request for relief are founded on the unique structure of the PMSA. “Like” entities should be treated alike, but the PMSA is fundamentally different to most other organisations operating under Letters Patent in Queensland for the reasons outlined in our Application.</p> <p>Equally, every fact scenario and circumstance underpinning an application such as this is different. Comparing one organisation and its appropriateness to continue to</p>

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	<p>consider what the precedential implications of granting the Beyond request might be for other Letters Patent. This is because there may be a large number of Letters Patent entities with similar or lesser accountability.</p>	<p>operate under Letters Patent against other organisations (even if they share the same fundamental underlying governance and decision structure) is virtually impossible. For that reason we submit that the Minister should not allow herself to be incorrectly lead to the conclusion that her decision on this Application will have any basis for establishing a clear precedent for other organisations. The argument contained in submission 60 is, as we foreshadowed in our Supplementary Application, nothing more than a competition for the fears of the Minister. It should be disregarded. It has no relevance to deciding upon the merits of the present Application.</p>
61	<p>There is a subsidiary concern embedded in the charitable trust comparison. Under the laws of Queensland (and the Commonwealth regulatory and tax regime) charitable trusts are not required to report to third parties explicitly – only provide data to the ACNC. Almost all of the more than 1,000 Private Ancillary Funds with billions of dollars under management are charitable trusts with no accountability to the public, beyond the requirement that a director of the trustee company be a public person. Further, these Private Ancillary Funds have express exemption from public scrutiny in the ACNC regulations.</p>	<p>We presume that this submission is an observation. The Applicant is fully aware of the different reporting treatment for charitable trusts under the Corporations Act and the ongoing obligations to the ACNC.</p> <p>The PMSA can not be compared to other organisations operating under Letters Patent for the extensive reasons outlined in our Application. The Applicant relies upon the same reasoning for its response to submission 60.</p>
62	<p>For Beyond to prosecute its case regarding lack of accountability as a justification for recall of the Letters Patent on the basis of the arrangements being ‘unique’, an explanation must be provided as to the uniqueness of the situation. A lack of accountability on constituent documents is by no means ‘unique’ in the context of charities. Beyond have not addressed this in their Submission. Like entities should be treated alike under the law.</p>	<p>The PMSA can not be compared to other organisations operating under Letters Patent for the extensive reasons outlined in our Application. The Applicant relies upon the same reasoning for its response to submission 60.</p>
63	<p>There is a deeper issue that is also not addressed and that is the basis upon which entities are alike. Regulation generally, and rules regarding accountability and transparency as a part of that, are imposed in Australia and across the world, based on risk. That is entities, are generally regulated similarly because they undertake activities involving risk that are similar - such as the risks inherent in conducting a school. Entities are generally not regulated based on form. Beyond’s argument is</p>	<p>This is incorrect. It is not a novel proposition at all.</p> <p>Regulation and the form of incorporation are rarely linked. Regulation is based upon industry categorisations and the market and risk factors associated with them, often with a consumer or public policy focus. The Applicant is not seeking to regulate the PMSA differently based on form. It is seeking increased levels of transparency and accountability that are now common to many not for profit organisations and charities</p>

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	<p>novel. It is that it is the form that PMSA takes, which is a Letters Patent, that justifies an amended regulatory regime. It is a new standard but Beyond offers no basis for this. This novel proposition calls for explanation. Beyond offers no explanation.</p>	<p>across Australia, particularly those operating in a modern education sector. Our argument is that this can only be delivered by a change to the Respondent's incorporation due to the unique structural problems that already exist within it. The Respondent's entire argument on "like for like" regulation fails on this point. There is no "new" standard being sought for the PMSA alone. The Minister is being petitioned to bring the PMSA into line with many other organisations that already operate in this way the education sector (including existing Presbyterian and Uniting Church Schools in Australia). In that sense, the PMSA would clearly be operating in a "like for like" environment.</p>
64	<p>Finally, Beyond designs and proposes new standards for assessing PMSA. Ostensibly this is to give effect to the 'stakeholder rights' because legal compliance is not enough. It is submitted that as like entities should be treated alike the Minister cannot legitimately have regard to the new standards that Beyond say should apply to PMSA in relation to the following:</p> <ul style="list-style-type: none"> a. Disclosure of Information including enrolments on MySchool;⁵⁰ b. Conflicts of Interest;⁵¹ c. Governance;⁵² d. Financial reporting;⁵³ and, e. Child Safety⁵⁴ 	<p>The standards that the Applicant would seek post re-incorporation are high, but they are in line with world's best practice in educational institutions. They are not "new standards" they are simply "higher" standards, and this is entirely appropriate given the nature of its enterprise and the inherent risks associated with caring for the lives and futures of children. The Respondent's submission suggests that this aim is somehow repugnant. It is not.</p>
65	<p>It is submitted the Minister cannot revoke the Letters Patent of PMSA whilst maintaining the standard that like entities must be treated alike.</p>	<p>Again, the Applicant is not seeking to regulate the PMSA differently based on form. It is seeking increased levels of transparency and accountability that are now common to many not for profit organisations and charities across Australia. Our argument is that this can only be delivered by a change to its incorporation due to the unique structural problems that already exist within it.</p>

⁵⁰ Discussed at paragraph 93.

⁵¹ Discussed at paragraph 99.

⁵² Discussed at paragraph 100 and 101.

⁵³ Discussed at paragraph 112 and 113.

⁵⁴ Discussed at paragraph 122.

Item	PMSA Submission	Beyond PMSA Response
		<p>The Respondent’s entire argument on “like for like” regulation fails on this point. There is no “new” standard being sought for the PMSA alone. The Minister is being petitioned to bring the PMSA into line with many other organisations that already operate under modern incorporation structures in the education sector. In that sense, the PMSA would clearly be operating in a “like for like” environment. To assert otherwise is in fact to argue that the many many other independent schools in Australia which already operate under an incorporation model are “different” from or “unlike” PMSA Schools. This is plainly incorrect.</p>
	<p>The Saint Andrew’s Hospital Toowoomba precedent</p>	
66	<p>In 2011 the Attorney-General at that time, the Honourable Paul Lucas MP, received a similar submission for the recall of the Letters Patent for Saint Andrew’s Hospital Toowoomba. Mr Lucas did not acquiesce to the request. In rejecting the application he described it as ‘without precedent’.</p>	<p>The application relating to the recall and cancellation of the Letters Patent for Saint Andrew’s Hospital In Toowoomba may have been similar in terms of the relief being sought, but ultimately bears no resemblance to the factual circumstances giving rise to this Application whatsoever.</p> <p>The fact that the then Minister, Mr Lucas, did not acquiesce to the request for relief in that application provides no precedent for the current Application at all.</p> <p>The Respondent has raised the existence and outcome of that application without attempting to explain the principles that were applied to that decision, other than an assertion that the application was rejected simply because no other decision had previously come before a Minister in which an appropriate exercise of the discretion under section 131 of the AI Act could be supported.</p> <p>The only “precedent” that the Applicant observes in relation to the Saint Andrew’s Hospital Toowoomba matter is that, ironically, it also involved a challenge to poor governance decisions affecting a Presbyterian Church affiliated institution. That the only two examples of such applications in Queensland involves concerns over Presbyterian Church aligned entities allegedly ignoring community concerns over governance standards and expectations arguably provides strong support for our earlier assertion that the operations and decisions of Letters Patent organisations are actively and materially influenced by the Churches that sit above them. Statistically, this seems to be self evident with the Presbyterian Church in Queensland.</p>

Item	PMSA Submission	Beyond PMSA Response
		<p>The Applicant submits that the absence of prior precedent for an exercise of the Minister’s discretion under section 131 in the circumstances being sought under this Application provides no basis, of itself, for a decision to reject this Application. Each case must be decided differently on its own facts.</p>
	<p>Interim conclusion on the two discretionary issues</p>	
67	<p>Beyond’s material is largely silent on evidence required, as distinct from submissions, to prove entitlement to the remedies it seeks. In fact on the first two key submissions, Beyond has not established by evidence that there is entrenched systemic governance failure. The evidence it relies upon points to functionality.</p>	<p>The Applicant rejects this submission. The Respondent is in governance failure. The events of 2017 and the flawed organisational response points to a significant dysfunction which the Applicant asserts is continuing to damage PMSA Schools. The evidence relied upon by the Applicant is detailed. It does not point to proper functioning at all.</p> <p>The Respondent has not addressed any of these allegations individually other than to casually dismiss them in aggregate. The Respondents unwillingness to address or respond to them individually in its submissions continues the approach of remaining ‘silent’ when confronted with allegations of conduct and performance. We submit that this damages the Respondent’s submissions. The failure to address them provides no basis for the Minister to make a decision which would support a proposition that the Respondent that it is functioning properly.</p> <p>A lifeless body still retains some “function” before it dies. The Minister is being asked to consider the quality of that function and decide whether intervention is required to save the patient (and its dependents) from its own self administered, but ultimately ineffective, home remedy.</p>
68	<p>A legally compelling case for recall of the Letters Patent has not been made out. If there was a basis for concern, this can be, or has already been, addressed by constitutional amendment by the churches.</p>	<p>Submission 68 is rejected. The Applicant has already explained in detail why Constitutional amendments alone are insufficient to solve the problems besetting the PMSA, particularly the limited scope and effect of the Constitutional changes that the Respondent has unilaterally selected as part of its reform agenda. These issues need no further discussion here and the Applicant relies on the material provided in the Application and its responded to other submissions in this document.</p>

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69	Beyond does not deal with each discretion separately and in particular does not deal with any of the issues raised in relation to the exercise of the second discretion to compel incorporation under the AI Act or the Corporations law.	Submission 69 is misconstrued and based upon an incorrect understanding of the legal construction of the discretion under section 131 of the AI Act. These matters have already been adequately addressed in our responses to submissions 37 and 42 above and require no further elaboration here.
70	Beyond glosses over the practical concerns, which are substantial.	Submission 70 is incorrect. The practical concerns are not substantial at all. We rely on our detailed responses to small number of submissions on practical concerns listed by the Respondent in submissions 47 to 54 (above).
71	Beyond conflates legal and non-legal rights and interests of ‘stakeholders’ of different classes but when these rights are classified, Beyond’s submission is that the Minister must act to enforce non-legal interests. There are considerable legal difficulties with this. Even if those legal difficulties can be overcome, the Minister should not act to revoke the Letters Patent or compel conversion to an association on the basis of non- legal interests.	<p>There is no conflation of legal and non-legal rights at all. The Applicant is not “designing” rights to which the Minister must have regard.</p> <p>The Respondent concedes that parents hold legal rights under their enrolment agreements with the PMSA. Section 106(2) of the Trusts Act also clearly establishes a right of members of the PMSA Schools community to approach the Minister to seek protection of their rights. Those community members have their interests represented by the Applicant. Beyond PMSA is comprised of followers and members who are parents of current students, past students, donors and friends of PMSA Schools. Our collective responses to submissions 55 to 59 adequately address this issue.</p>
72	Beyond also does not deal with the impact that setting a precedent of this nature would have on the not-for-profit community in Queensland.	<p>This is because our argument is that no precedent will be set for the not-for-profit community in Queensland as a consequence of the Minister’s decision to grant this Application. This submission is another example of the Respondent seeking to appeal to the fears of the Minister. It invites the Minister to disregard the merits of the Application and should be disregarded.</p> <p>We rely upon our detailed responses in submission 66 above and the detailed submissions contained in our Application on this point.</p>
73	The Beyond Submission is not only without substance, it is also without precedent. The correspondence of the former Attorney-General makes it clear that no involuntary recall has ever occurred.	The suggestion that the Minister should dispense with this Application for no other reason that there exists no prior precedent for it is not a legal argument. It is a historical observation about an entirely separate application founded on an entirely different set of factual circumstances (also involving concerns over an institution under the influence and control of the Presbyterian Church) which was not granted by a

Item	PMSA Submission	Beyond PMSA Response
		<p>predecessor to the current Minister.</p> <p>The existence of this “precedent” is irrelevant to the Minister’s decision in the current Application which we submit must entertain a consideration and assessment of an entirely different factual scenario.</p> <p>The fact that the Ministerial discretion was considered necessary to create at all by legislators when the AI Act was passed, clearly evidences a perceived need for its potential application in both voluntary and involuntary circumstances.</p> <p>Furthermore, the Respondent should agree that the common law does not remain stagnant. It constantly evolves and responds to changing community expectations and in response to the need to apply it to different factual circumstances. The decision to exercise a statutory discretion in a particular circumstance is no different. To argue that it should not be exercised, for no other reason than because it has not yet met a circumstance where it should be exercised, has absolutely no legal merit and offends the nature of the discretion invested in the Minister.</p>
PART C – RESPONSE TO SUBMISSIONS 3-16 AND PART 5		
	Introduction	
	<i>The relevance of this Part</i>	
74	<p>We stated at the outset that it appeared that Core Submissions were 1 and 2 and that 3 through to 16 operated to scaffold the first two core submissions or provide grounds for the exercise of the Minister’s discretion. If the submissions set out on behalf of PMSA above are accepted, then it is not necessary to progress further. This is because we trust the fundamental argument has been addressed in Part A and we trust we have set out persuasive reasons why the discretion cannot, or at least should not, be exercised in Part B.</p>	<p>For the extensive reasons set out in response to each and every submission of the Respondent in Parts A and B, we submit that the Respondent has not made a persuasive case at all. Its case is based on an incorrect application of the law.</p>

Item	PMSA Submission	Beyond PMSA Response
75	<p>Nevertheless, across the 127 pages of the Submission supporting the Application’s many allegations are the further 57 pages of the Supplement. Beyond asserts that every allegation made under these five headings mentioned below is directed to the purpose of showing that these failings are caused:</p> <p><i>either totally or in large part by the existence of the PMSA’s Letters Patent, and that they would either be removed as problems or would be easier to fix in the absence of the PMSA being constituted under Letters Patent.</i>⁵⁵</p>	Correct.
76	<p>PMSA does not accept that assertion. For example, in the Submission there are two sections that discuss appointments of principals – one suggesting that PMSA responded too slowly⁵⁶ and the other suggesting PMSA responded too quickly⁵⁷ – both are irrelevant to the substantive issue of recall of the Letters Patent which is the subject of the Application. That PMSA does not discuss these issues (and the apparent inconsistency) is not because PMSA accepts either allegation. It submits that because the allegations are irrelevant to the issue, there is no need to comment. PMSA has therefore made a series of judgements as to the issues which warrant response but has not responded to everything.</p>	<p>The selection of this criticism as a sole basis for response is curious, but again, ignores the separate contexts of those two criticisms. The submission attempts to engineer a non-existent “confusion” in the Applicant’s allegations. No confusion exists. Different factual circumstances underpinned the requirements to make each of those decisions and on both occasions the Applicant submits that the Respondent’s decisions on timing were not optimal and increased risks to the schools.⁵⁸</p> <p>With regard to the other extensive allegations contained in our Application, the fact that the Respondent has chosen not to respond to them because (it asserts) they are “irrelevant”, is a convenience to the Respondent’s Submissions, nothing more. All of the allegations contained in the Application operate in aggregate to explain why the Respondent is not capable of operating responsibly and in a trustworthy manner under a Letters Patent structure. The Applicant submits that the Respondent should have responded to each allegation.</p>

⁵⁵ The Submission page 53.

⁵⁶ The Submission page 92.

⁵⁷ The Submission page 114.

⁵⁸ This is **not** a criticism of currently appointed Principals of any PMSA School. The Applicant supports each of them and wishes them every success in their roles. In the case of the appointment of the current Principal of Somerville House, that appointment is very much welcomed, but as a matter of process and timing, the Applicant has always maintained that the calibre of that appointment was a result of luck. Although the result may have ended up being the same in any event, the field of candidates would have been significantly different had the timing for the appointment occurred when a governance crisis did not exist.

Item	PMSA Submission	Beyond PMSA Response
	The structure of this Part	
77	<p>The material is approached by focussing on the possibly relevant material set out in Part 5 of the Submission and the alternative model set out as Appendix 2 to the Supplement. This is because while there are lengthy submissions in Part 2 of the Submission we have dealt with the first two and the subject of Parts 3 and 4 (the Letters Patent) in Section A. We have suggested that the Submissions 3 to 16 dealt principally with the exercise of discretion issues and we have taken up that issue in Part B. This therefore brings us logically to Part 5. Part 5 is headed 'the failings of PMSA' and provides, the substantive further complaints of Beyond. The section has five headings which we follow.</p> <p>5.1 Structural failings 5.2 Governance failings 5.3 Financial failings 5.4 Child safety failings 5.5 Cultural failings.</p>	<p>The Respondent makes a qualitative judgement on which allegations it will respond to, and which allegations it will not. All of the allegations contained in the Application operate in aggregate to explain why the Respondent is not capable of operating responsibly and in a trustworthy manner under a Letters Patent structure. The Applicant submits that the Respondent should have responded to each allegation.</p>
78	<p>The Supplement traverses essentially the same material as the Submission, but for the new model. We have addressed the impossibility of compelling a company structure above so below focus on the alleged failings.</p>	<p>We have already repeatedly stated that the Proposal for an alternative model set out Appendix 2 does not form part of our Application and involves no issue of compulsion. The Respondent has simply failed to read and understand the Proposal in its proper context.</p>
	<i>An invitation</i>	
79	<p>From the above, and comments below, it will be evident that PMSA has not sought to address every allegation and so the Minister is invited to ask for further submissions on any issue that the Minister considers important if, in the Minister's opinion, an issue has not been adequately addressed by PMSA.</p>	<p>The Respondent makes a qualitative judgement on which allegations it will respond to, and which allegations it will not. All of the allegations contained in the Application operate in aggregate to explain why the Respondent is not capable of operating responsibly and in a trustworthy manner under a Letters Patent structure. The Applicant submits that the Respondent should have responded to each allegation.</p>

Item	PMSA Submission	Beyond PMSA Response
	Structural failings	
80	<p>If there were structural failings, repeal of the Letters Patent would neither ‘remove’ nor ‘make easier to fix’, those issues. This is because structural failings are not ‘unique’ to Letters Patent entities generally nor PMSA’s form of incorporation in particular. These submissions by Beyond are therefore irrelevant, but on examination, the evidence does not support the substantive allegations of Beyond. The first structural failing Beyond suggests has to do with the composition of the Council. The submission is incorrect in its assertions as to membership, tertiary qualifications and as to competence. There were, at that time of Beyond’s Submission nine PMSA Councillors. The table below sets out the details of the PMSA Board as at 25 May 2018 – the date of Beyond’s Submission.</p> <p><i>[Table not extracted]</i></p>	<p>The Applicant rejects the Respondents assertions that a repeal of Letters Patent would neither remove nor make it easier to fix the identified structural failings. It equally rejects the Respondent’s convenient dismissal of the identified structural failings as being “irrelevant”.</p> <p>The Applicant has never asserted that the structural failings identified in the Application are unique to Letters Patent (although their resolution is clearly not assisted by the existence of Letters Patent). The Applicant has however consistently asserted that the structural failings of the PMSA are entirely unique to the problematic combination of the PMSA’s incorporation under Letters Patent and the absence of a single unified point of accountability in the joint mission that sits above it and influences its proper functioning. This point was made repeatedly in our Application.</p> <p>The Respondent subsequently lists the 9 Councillors that were appointed at the time that our Application was lodged and their qualifications. It does not provide any significance for that statement and so the Applicant assumes that it is descriptive only. It adds nothing to the submission.</p>
81	<p>Further, Beyond’s assertion that Con Graves was appointed as an Independent Councillor is also incorrect. Mr Graves was appointed as a Uniting Church representative.⁵⁹</p>	<p>There seems no point to this submission other than as a clarification. We therefore see no utility in making comment upon it.</p>
82	<p>Beyond also makes much of age and longevity of service but, as the famous (now) Yale governance professor Jeffery Sonnenfeld found: ‘research on executives ... has shown that, to the contrary, age is often an asset’.⁶⁰ Beyond have offered no evidence that longevity of service is a negative and in fact it can be a positive in the development of the social ecosystem that distinguishes great boards</p>	<p>On the contrary the Applicants focus upon the longevity of service of many members of the PMSA Council (now the PMSA Board) was focused primarily upon the most significant and materially damaging aspect of that longevity – the exceptionally poor cultural practices and behaviours of the Council as a whole.</p> <p>The PMSA Board has recently announced a material mandatory reduction to the length</p>

⁵⁹ For completeness we mention that in November 2018, some six months after the submission by Beyond was lodged, when Mr Graves was re-appointed, he moved from being a Uniting Church appointee to a PMSA appointee.

⁶⁰ Sonnenfeld, J. A. (2002). What Makes Great Boards Great Harvard Business Review 80(9):106-13, 126 · October 2002.

Item	PMSA Submission	Beyond PMSA Response
		<p>of tenure of PMSA Board members to 9 years. If the Respondent genuinely believed in the principles espoused by Sonnerfeld, then surely it would have fought to retain completely uncapped tenure for PMSA Board members. The Respondents actions contradict this submission and their “claimed” views.</p>
83	<p>The second alleged failure is a sufficient skills-based representation on the PMSA Council. The skills base of the Council is sufficient. Current PMSA Board Members as at 26 March 2019 are set out as Annexure A.</p> <p><i>[Annexure A not extracted]</i></p>	<p>The Applicant acknowledges that there have been changes to the composition of the PMSA Board in the last 18 months. Although some of those changes are welcome “renewal”, as a singular action they add little to the resolution of the issues outlined in our Application and the need for the relief being sought by the Applicant.</p>
84	<p>In September 2018 following PMSA Board approval of its Governance review recommendations, PMSA decided to publish a skills matrix for the PMSA Board (now completed) and School Council Members (to be actioned in second quarter of 2019). In addition to publishing the skills matrix, following the release of the new PMSA Constitution, terms for Board membership are for three years with a maximum of three terms, or nine years.</p>	<p>The revised term for Board membership is completely at odds with the Respondents position in submission 82. Either it agrees that uncapped Board terms are appropriate for good governance or it does not. This submission is another contradiction.</p>
	<p>Letters Patent</p>	
85	<p>The comments made in relation to the Letters Patent by Beyond, so far as are relevant, have already been shown to be either inaccurate or based on a misunderstanding of the relevant law, so we do not add to comments made above.</p>	<p>This is an open ended submission which is impossible to respond to. It makes a sweeping claim that certain “<i>comments</i>” made in relation to Letters Patent “<i>have already been shown to be either inaccurate or based on a misunderstanding if the relevant law</i>”.</p> <p>The Respondent does not extrapolate on which comments are so characterised and incorrectly claims that it has demonstrated otherwise. It has not. Submission 85 lacks sufficient clarity and evidence for any response. It should be disregarded by the Minister entirely.</p> <p>The Applicant completely refutes that its position on Letters Patent is based on a misunderstanding of the relevant law. On the contrary, all of our preceding responses</p>

Item	PMSA Submission	Beyond PMSA Response
		to the Respondent’s Submissions demonstrate numerous inaccuracies and deficiencies in the legal arguments put forward by the Respondent on this issue.
	Constitution	
86	<p>The allegations regarding the Constitution are incorrect. The PMSA Constitution was updated and released publicly in late 2018. Relevant extracts from the new PMSA Constitution are included below that show that there is no remuneration available to Board members.</p> <p><i>Clause 7.2 No remuneration</i> <i>(1) No Board Member may receive any remuneration for his or her services in his or her capacity as a Board Member of the PMSA.</i> <i>(2) Despite clause 7.2(1), the PMSA may pay the Board Members’ travelling and other expenses that they properly incur:</i> <i>(a) in attending Board meetings or any meetings of committees of the Board; and (b) in connection with the PMSA’s business.</i> <i>(3) The Board must approve all payments the PMSA makes to its directors.</i></p>	<p>The allegations at the time of lodgement of the Application were not incorrect. They were entirely accurate. Subsequent Constitutional amendments in late 2018 were acknowledged in the Applicant’s Supplementary Application in February 2019, but the Applicant considers that their scope and effect are insufficient to address the Applicant’s concerns. With regard to the Respondent’s decision to select the allegation regarding “remuneration” of Board members as its only point of response, the amendment is welcomed, but the Applicant asserts that the amendment does not in fact operate to remove the giving of remunerative benefits to Board members. Circumstances where serving Board members receive fee discounts for children attending PMSA Schools is clearly a material remunerative benefit. It continues not to be addressed.</p> <p>The Applicant makes the following comments in respect of the content and timing of the PMSA’s release of details of its Constitutional reforms:</p> <ol style="list-style-type: none"> 1. The updated Constitution was conveniently released and published on precisely the same day that the Applicant was scheduled to meet with members of the Office of Fair Trading in respect of this Application. An advance copy appeared to have been provided to the Office of Fair Trading the day prior. We will let the Minister decide whether to afford significance to both the timing and manner of provision of that material in these circumstances. 2. The Applicant acknowledges that some structural changes were contained in the updated Constitution. As mentioned above, this includes the long overdue matters relating to remuneration of Board members and other structural changes which were mainly of a numerical nature (such as numbers of Board members etc). We submit that those changes were not implemented by free choice. They were extracted by diligent public pressure for reform. Assertions

Item	PMSA Submission	Beyond PMSA Response
		<p>by the Respondent that it had been genuinely considering and working through Constitutional reform for many years prior to this have not been supported by material action in that period. By the PMSA’s own public admissions, those “efforts” had been occurring since 2014. It is submitted that until early 2018, there was simply no desire or appetite within the PMSA to authentically address governance reform at all.</p> <p>3. The announced Constitutional changes were released in late 2018 after a laborious period of consultation with external consultants (the AICD). They were underwhelming to the community. The changes largely consist of an aggregation of smaller and easily devised changes that the Respondent claims will bring about significant change and improvements within its organisation. They will not. The more material structural reform issues which are required to be implemented in order to embed trust within its organisation have been ignored. The Applicant submits that an authentic restoration of organisational trust via a change to the PMSA’s basis of incorporation is the only solution to the current commercial crisis affecting PMSA Schools.</p>
87	Clauses 3.11 to 3.13 of the PMSA Bylaws (currently under review), will be updated in accord with item 3.4 of the newly approved Constitution.	The Applicant relies upon and restates its response to submission 86 above.
	Communications protocols and the Deloitte Reports	
88	<p>If there were communication failings, repeal of the Letters Patent would neither ‘remove’ nor ‘make it easier to fix’, those issues. This is because communication failings are not ‘unique’ to Letters Patent entities generally nor PMSA’s form of incorporation in particular. These submissions by Beyond are therefore irrelevant but on examination the evidence shows the opposite of Beyond’s Submission. The evidence adduced by Beyond shows that:</p> <p>a. The PMSA’s consultants engaged with the school communities from the outset and were consultative;</p>	<p>The Applicant has never asserted that communications failings are “unique” to Letters Patent entities. The Respondent continues to underplay the organisational improvement benefits that would ensue from a shift of incorporation. It continues to subordinate the value of cultural improvements to legal structure and strict statutory obligations.</p> <p>Not every aspect of organisational improvement is contingent upon the existence of a corresponding legal liability or obligation. Organisational culture is broader than that. The Applicant maintains its submission that a repeal of Letters Patent will result in increased accountabilities that will drive an improvement in the culture of transparency. In turn, this will drive a fundamental cultural shift in the PMSA. It will</p>

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	<p>b. The consultants produced a report which did not meet with the approval of the PMSA Council; who in turn,</p> <p>c. communicated to the schools' communities that they would not be advancing the Deloitte recommendations, and finally, when certain persons did not accept this assurance;</p> <p>d. had lawyers address misconceptions directly with the relevant parties.</p>	<p>embed a strong foundation that will facilitate a culture of continuous organisational improvement to a level that the Applicant submits is not capable of being achieved under its present basis of incorporation.</p> <p>With regard to the Respondent's assessment of the evidence adduced by the Applicant, we respond to each of them in order (adopting its numbering):</p> <ul style="list-style-type: none"> a. No evidence has been presented that this occurred. It is disputed that Deloitte ever consulted with the community. The reports prepared by it and their purpose and effect were deliberately withheld from the community and were in fact an actively guarded "secret" by the PMSA. b. Unless the Respondents can produce definitive evidence of the rejection of the Deloitte Reports, both the Applicant and the Minister can only take the Respondent at its word. Later comments in response to these submissions and aspects of the current reform agenda being implemented by the PMSA demonstrate that this statement by the Respondent is not correct at all. c. This was never communicated to the community at or approximating the time that the PMSA Council would have considered those Reports and decided upon them. We submit that this is an entirely incorrect submission and invite the Respondent to clarify it by pointing to specific public announcements in either 2016 or early 2017 which definitively explain the context and purpose of the Deloitte Reports, their recommendations and the decision by the PMSA not to adopt the recommendations. No such communications exist. The submission should be retracted and entirely disregarded by the Minister. d. This submission is extremely misleading and does not accurately represent the facts or the timeline within which such activities occurred. Importantly, the existence of the Deloitte Report was NEVER made public until details were released in an article in The Australian newspaper on or about 24 October 2017. On the same day, the PMSA saw fit to address what it saw as so called "misconceptions" by engaging lawyers to send aggressive correspondence to the Somerville House P&F Association volunteers threatening legal action if

Item	PMSA Submission	Beyond PMSA Response
		<p>the report was discussed. If any subsequent instructions were provided to legal practitioners to “address misconceptions” directly with “relevant parties”, the Applicant is not aware of it. Neither the nature of those “misconceptions” nor the identity of the “relevant parties” has been disclosed which makes it impossible for the Applicant to frame a response to that portion of submission 88. In any event, it is apparent that the circumstances of the lawyers briefings to whomever received them must have been restricted under the confidentiality mechanisms enshrined within all of the School volunteer bodies such as the P&F’s, Past Students Associations and Foundations. The broader community it seems will never be allowed to know the details of those interactions.</p>
89	<p>The evidence is as follows:</p> <p>a. In September 2015 PMSA engaged Deloitte to conduct a review of business services. Their report was presented to the Council in July 2016.</p> <p>b. In late 2016 the PMSA Council also engaged Deloitte to conduct an additional review on governance and organisation.</p> <p>c. The report made wide ranging recommendations on the governance of the PMSA Council, Council Committees and Schools Councils, and recommended implementing a new operating model including a Corporate COO role. It also recommended moving to a shared services model where school business managers (and by default all school business services) had a hard reporting line to the COO. That report was leaked. The report was not warmly received.</p> <p>d. The PMSA received feedback and after assessing business needs, the existing culture and the views of parents, staff and others, the Council decided not to implement the second of the Deloitte report’s recommendations.</p>	<p>The timeline provided by the Respondent adds nothing to its submissions.</p> <p>The Applicant relies upon its response to submission 88 above. The Applicant further submits that despite the Respondent’s assertions that the Deloitte Report was rejected by the PMSA, the measures being implemented through the current reform agenda (including the increased operational and strategic roles being built by the PMSA and the appointment of a significant number of new corporate staff) is delivering an “engineered” position for the PMSA which is designed to create a new relevance to PMSA Schools. The Applicant submits that what is being rolled out is in fact Deloitte “by stealth”.</p>
90	<p>The actions of PMSA represent appropriate decision making and communications by an organisation in tune with its environment and the views of parents, staff and others.</p>	<p>The Applicant completely rejects every aspect of this submission, particularly the part which asserts that the PMSA is “<i>in tune with its environment, the views of parents, staff and others.</i>” We submit that nothing could be further from an accurate representation of current community sentiment.</p>

Item	PMSA Submission	Beyond PMSA Response
		<p>Our comments in response to submission 89 demonstrate that the PMSA is seeking to become involved like never before in the functioning of PMSA Schools. Given the disastrous effects of their interventions in 2017, the Applicant submits that this presents as a risk to PMSA Schools. It is unfathomable to the community that, in circumstances where trust in the PMSA has been totally destroyed, the response of the PMSA and the Churches has been to ask the community to place even GREATER trust in the organisation without sufficient corresponding structural concessions to their concerns. This position is one sided and the Applicant submits that it <u>lacks self-awareness.</u></p> <p>The Applicant invites the PMSA to demonstrate the effectiveness of this submission by acceding to the Applicant’s request for a by-arrangement Audit by the Auditor-General. Surely the picture of robust financial health that the PMSA is publicly espousing is the most objective measure of the accuracy of this submission. What better way to demonstrate that everyone is “on-board” and happy with the “appropriate decision-making” of the PMSA than by clearly showing that the enrolment and revenue position of PMSA Schools is flourishing when compared to a reasonable benchmark performance year ? Another measure would be a candid disclosure of the PMSA’s immediate forward plans for material capital expenditure programs across all 4 schools for the next 3 years, including 2019 and by when each of those capital programs will be fully funded.</p>
91	Thus Beyond’s own evidence demonstrates two way communication.	Clearly there has been two way communication. It is submitted that the communication has however been entirely constrained and completely ineffective to effectively “sell” the message that the PMSA wishes to impart. It has been a disaster. The Applicant relies upon its responses to the preceding submissions in support of this statement.
	<i>Information Disclosure, Record Keeping and Retention</i>	
92	If there were failings in information disclosure, record keeping and retention, then repeal of the Letters Patent would neither ‘remove’ nor ‘make easier to fix’ those issues. This is because such failings are not ‘unique’ to Letters Patent entities generally nor PMSA’s form of	The Applicant does not contest that the Respondent’s level of disclosure complies with the minimum disclosure obligations required of it at law. The Applicant has always asserted that the fundamental problem for the Respondent is the absence of trust placed in it by the community.

Item	PMSA Submission	Beyond PMSA Response
	<p>incorporation in particular. These submissions by Beyond are therefore irrelevant, but on examination the evidence does not support the substantive allegations of Beyond. As pointed out elsewhere, the PMSA discloses to the full extent of legal requirements, and Beyond either knows or could know that by due inquiry.</p>	<p>Trust is inherently important for an institution that is charged with the care and development of children. Trust is the driver for every measure of performance, and particularly for financial performance. When organisations like the PMSA have their trust eroded or destroyed, rebuilding it can not happen by continuing to do what has always been done. That is why the Applicant asserts that it is absolutely essential for the Respondent to adopt levels of compliance, disclosure and transparency that <u>exceed</u> the bare minimum legal obligations. Continuing to adopt the stance that mere compliance is enough will not fix this fundamental underlying business problem. If the PMSA can't grasp that quickly, the market will rapidly overtake PMSA Schools.</p>
93	<p>On the issue of due inquiry, Beyond makes much of its inability to access enrolment numbers but the enrolment numbers are readily available on the My School Website. Provided it satisfies its extensive legal disclosure obligations, it is a matter for PMSA to decide what information it provides to whom and when having regard to its legal duties as a charity. PMSA denies that Beyond has any right to review PMSA's IT or record keeping and that these allegations are not evidence that 'current level of information disclosure to stakeholders is wholly inadequate'. As we have mentioned earlier there is not a class of persons independent of the public with 'stakeholder rights' to information.</p>	<p>The Respondent does not have "extensive legal disclosure obligations" at all.</p> <p>Further, it is not the disclosure of discreet data such as enrolment numbers which will satisfy the Applicant's requirements. We are well aware of the data set which the Respondent has reproduced in its submission, but our Supplementary Application made it abundantly clear that data on enrolment numbers in the context of our allegations of a fundamental erosion of the financial position of PMSA Schools is meaningless without corresponding disclosure of tuition fee data and a correlative analysis of <u>both</u> data sets. That is the only way to obtain a fair picture of the financial health of the schools. The Respondent has conveniently ignored this aspect of our Supplementary Application in its submission.</p> <p>The Applicant has never asserted that it has a legal right to review the PMSA's IT or record keeping. Clearly it does not. The PMSA unlike other schools (such as Brisbane Grammar) continues to make a conscious and deliberate "choice" not to make that information available to parents, donors and other members of the school communities. It does so under the disingenuous pretext of "confidentiality" and an equally disingenuous assertion that disclosing that information will erode the "competitive" position of the schools. We have always maintained that this is an argument that would only ever be espoused by an organisation that is simply not performing in alignment with the position that it is presenting to the market. The PMSA has been invited on numerous occasions to dispel this concerns and has refused to do so. It therefore remains open for concerned members of the school community</p>

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		<p>to continue to question the blind “trust” that they are being asked to place upon the accuracy of the PMSA’s stated position. The PMSA’s legal obligations as a charity do NOT preclude it from providing higher levels of disclosure. It simply <u>chooses</u> not to do so. Particularly in the current circumstances, the community is entitled to question whether this “choice” is linked to its “performance”.</p> <p>This is a key problem challenging the PMSA, and one which it must resolve if it is to move forward. It is therefore one of the primary reasons for the making of this Application. The absence of adequate disclosure in this instance is not driven by the rule of law or the PMSA’s adherence to it. It is driven by the extraordinary circumstances that our schools find themselves in following the devastating actions of the PMSA in 2017 and 2018.</p>
	<i>Engineered structural control</i>	
94	<p>If there were failings in engineered structural control then repeal of the Letters Patent would neither ‘remove’ nor ‘make easier to fix’, those issues. This is because such failings are not ‘unique’ to Letters Patent entities generally nor PMSA’s form of incorporation in particular.</p>	<p>The Respondent does not state which section of the Application it is referring to here. The concept of “engineered” structural control (as used in our Application) did suggest that there were “failures” in engineered structural control. However, the failure is in the “existence” of such controls in the first place.</p> <p>Our Application asserted that, with regard to engineered structural control over school bodies, including School,Councils, school Foundations and P&F’s, whilst incorporation of the PMSA under the AI Act will not directly change these structural issues, it must follow as a consequence of re-incorporation that these structural conflicts of interest will be resolved. This is because under AI Act incorporation, individual PMSA Councillors will cease to have individual legal liabilities for PMSA Schools. As a result, there will be no argument needed for maintaining extended control over these groups to the extent that is currently the case.</p> <p>We submit that the change to the legal liability position of individual PMSA Board members will remove the primary impediment to greater control and operational freedoms being devolved to School Councils in particular. School Principals will have</p>

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		<p>the ability to do what they should always be tasked with doing – operating as CEO’s under the direction of independent School Councils without the ever present risk of their considered executive decisions being overridden by ad hoc decisions of a small number of part time volunteer PMSA Board members who are not qualified to intervene in operational matters.</p> <p>A change to the individual legal liability position of PMSA Board members will also remove the current (perceived) impediment to P&F groups to be independently incorporated. We submit that this would remove a problematic liability exposure from those groups and the volunteers who operate under them. Current group insurance arrangements offer insufficient protections to office holders in those groups.</p>
95	<p>The issues raised under the heading ‘engineered structural control’ of the school bodies could arise similarly under any corporate form. The example cited by Beyond of PMSA fire safety issue from 2002 is out of date and irrelevant to sound Corporate Governance principles in 2019. It is not unreasonable for PMSA to determine that its P&F’s are maintained within its existing structural and governance arrangements. This position is also in step with many other Independent Schools arrangements.</p>	<p>The cited example of the BBC fire safety issue is neither out of date nor irrelevant to sound corporate governance principles in 2019.</p> <p>The evidence of members of the BBC P&F who were present and spoke on record at the Beyond PMSA Town Hall Meeting In December 2017⁶¹ was that the PMSA response to the raising of the safety incident by the BBC P&F was to amend the Constitution of the P&Fs to strengthen reserve powers and controls to the PMSA. This is hardly sound practice in response to a health and safety risk and remains acutely relevant to PMSA Schools to this day. If this is “in step” with practices at other Independent Schools, then the Respondent is invited to explain which specific schools maintain them and which schools have respond in the same manner in which it has been alleged that the PMSA responded to serious safety concerns.</p>
96	<p>The issues raised regarding BBC and the P&F’s are also not unique to the PMSA Letters Patent structure.</p>	<p>For the reasons stated above, the Applicant asserts that they are unique to the PMSA and its culture under its Letters Patent structure.</p>

⁶¹ See the full recorded proceedings and speeches on the Beyond PMSA Facebook Page.

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	<i>Conflicts of Interest</i>	
97	The Beyond submission regarding conflicts of interest is similarly unfounded. Complex issues in relation to conflicts of interest can arise in large, interrelated charitable entities but the legal form is irrelevant.	We submit that the PMSA Group structure still retains structural components via its delegations model that embed continuing conflict risks. Whilst incorporating the PMSA under the AI Act does not directly resolve conflict of interest issues, we submit that increased obligations around financial reporting and disclosure would influence cultural change within the PMSA that would drive the adoption of more acceptable governance changes which would, in turn, would reduce the risks of conflicts of interest occurring. This would also protect the position and integrity of PMSA Board members.
98	In relation to conflicts of interest, the standards imposed upon charities, which includes PMSA, under the ACNC legislative regime are higher than those imposed upon commercial corporations. This is because, in addition to all of the Corporations Law requirements, the ACNC requirements include an obligation to address ‘perceived’ conflicts of interest. ⁶² If there is an improperly managed conflict then a complaint can be made under this higher standard to the ACNC. Letters Patent form is irrelevant.	This does not resolve the absence of recourse issues for members of the PMSA Schools communities. The Applicant relies upon its responses to submissions 25 and 97.
99	Compliance with this even higher standard is not enough for Beyond and in the Supplement, Beyond sets out an even more onerous regime to manage conflicts. ⁶³ Beyond would seek to prohibit Board Members or employees from supplying goods or services (such as rentable premises or legal advice) at below-market rates on any basis under any circumstances if a tender was involved. This imposition of original and excessively onerous obligations, is illustrative of the approach taken by Beyond in the submission generally, but particularly in the new Appendix	No new standard is imagined at all. The Respondent does not even comply with the higher standard that is asserted in submission 99. The structural composition of PMSA Group entities, the delegations model that it adopts and its constitution under Letters Patent continues to create a breeding ground for embedded conflict risk. Apart from our view that no PMSA Board member should <u>ever</u> enter into a commercially remunerative arrangement with the PMSA or PMSA Schools ⁶⁴ , submission 99 demonstrates a concerning lack of understanding of the most

⁶² The Strengthening for Purpose review of the ACNC legislation recommended repeal of the regulations impose obligations on charities to manage ‘perceived conflicts’ so that the obligations upon charities are the same as those imposed upon corporations generally.

⁶³ Supplement Appendix 3 page 56.

⁶⁴ A position that we have consistently maintained as ethically appropriate and entirely in step with community expectations and standards for a governing body in a modern educational environment, but which seems to be curiously lost on the PMSA.

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	<p>3 to the Supplement. It is an approach which disregards the law and designs a fresh compliance architecture according to Beyond’s own expectations.</p>	<p>basic and fundamental principles of conflict management. School representative bodies continue to battle with the PMSA over this very issue.</p> <p>The PMSA’s engagement with the Somerville House Foundation over the alleged data breach issues in 2017 and 2018 are a clear example of this. The recent resignation of all non-PMSA members of the BBC Foundation over precisely these issues continues this concerning state of affairs. There is no security for PMSA Schools whilst these entrenched structural conflict risks persist. They exist firstly because of the perceived ownership liability risks that accompany incorporation under Letters Patent and the vesting of ownership in individual PMSA Board members.</p>
	<p><i>Governance Failings</i></p>	
<p>100</p>	<p>In Parts A and B we set out comment on accountability and do not propose to recite the same material here. At this point it is appropriate to point out only that in the Beyond Submission, governance reform has a very specific meaning which is much narrower than it is in common parlance. In common parlance governance reform refers to all dimensions of governing an entity and reform that encompasses many options. In the Beyond Submission the expression ‘governance reform’ distils only to abolition of Letters Patent. Beyond made this point at the beginning of Part 5 of the Submission but the implication of this is spelt out clearly earlier in the following terms: ... any proposals for governance reforms that are designed or required to “co-exist” under Letters Patent will <i>not solve the significant problems which will be outlined in this Application</i>.⁶⁵</p>	<p>This is an absolutely incorrect interpretation of the Applicant’s views on governance reform. The recall and cancellation of Letters Patent is the only relief that the Applicant is able to petition under section 131 of the AI Act. Clearly that is the sole purpose and focus of the Application.</p> <p>Our argument is that effective broader governance reform can not be built upon a foundation of Letters Patent in the circumstances that are specific to the PMSA, for the ample reasons espoused in our Application and restated above.</p> <p>The Applicant clearly understands what governance reform entails. The Respondent’s submission ignores the broader material cited in our Application and the extensive list of governance reform articles that have been carefully researched and published on our Facebook Page and website which demonstrate this. Our Application makes it clear that governance reform must continue in conjunction with an abolition of Letters Patent under a new incorporation structure. The assertion that the Applicant is stating that removal of Letters Patent should be the “end point” completely misconstrues the pretext of our Application.⁶⁶</p>

⁶⁵ Accompanying Letter the Application Page 4. See also the Submission Part 2.2.2.

⁶⁶ This is yet another example of the selective extraction by the Respondent of isolated words or phrases from our Application. (The Minister may care to note that the Applicant has not selectively utilised the Respondent’s statements in the same manner. We have actually extracted the entirety of their submissions in full context beside our own responses).

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		<p>The Applicants' position is that:</p> <ol style="list-style-type: none"> 1. Retention of Letters Patent will continue to damage the PMSA because it feeds a fundamental and continuing mistrust of the organisation; 2. The mistrust that exists because of the Letters Patent can not be rectified by overlaying other surface level governance reforms. <p>The governance " platform" must be fixed before it can be soundly built upon.</p>
101	In summary, there is nothing that PMSA could do by way of governance reform to address 'governance failings' that would satisfy Beyond other than agree to recall of the Letters Patent.	Correct. Any effective governance reform of the PMSA that will repair the breach of organisational trust and the consequent damage caused to PMSA Schools can not exist without corresponding structural reform to the basis of the PMSA's incorporation.
102	To assist the Minister we mention that PMSA has undertaken substantive actual reforms. These are set out in Part D.	These are noted by the Applicant. Our responses to earlier submissions of the Respondent and the extensive material set out in our Application explain why the Applicant considers that these reforms are insufficient without corresponding structural reform to the basis of the PMSA's incorporation.
	Financial Failings	
103	If there were financial failings, repeal of the Letters Patent would neither 'remove' nor 'make easier to fix', those issues. This is because such failings are not 'unique' to Letters Patent entities generally nor PMSA's form of incorporation in particular. These submissions by Beyond are therefore irrelevant but on examination the evidence does not support the substantive allegations of Beyond. The submissions in relation to financial failings are probably the most ironic in a number of regards.	Financial failings are not unique to organisations that operate under Letters Patent. The Applicant has never asserted this. However, the Applicant does not need to demonstrate that any category of failing is "unique" to the PMSA, simply that their cause is uniquely attributable to PMSA and its uniquely dysfunctional structure.
104	First, the Submissions set out the extraordinarily healthy asset position of PMSA. It is difficult to describe the entity as financially failing. ⁶⁷ In the	The Respondent's submissions are that the PMSA has an " <i>extraordinarily healthy asset position</i> ". The asset position of the PMSA bears little relevance to financial health in

⁶⁷ The Submission page 86.

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	<p>Supplement, Beyond further alleges PMSA is “highly leveraged”⁶⁸ and in “business crises”.⁶⁹ If conversion to a Letter Patent does not occur: ‘the future viability of PMSA Schools is at significant and imminent risk’ Beyond states.⁷⁰ Beyond offers no evidence in support of these assertions and they cannot be true by any objective measure.</p>	<p>the context of many not-for-profit organisations, particularly in the education sector.</p> <p>An educational institution can have a healthy asset position delivered or “gifted” to it over many years by donors and parents and yet still be financially challenged at the cashflow level by extraordinarily poor governance decisions. A healthy asset position is only of benefit if those assets are sufficiently liquid to be able to be drawn upon to address cashflow issues or immediate capital requirements. The PMSA’s “asset” position includes school campuses. The recourse for the PMSA is therefore either to increase debt or to sell assets. Is the PMSA considering selling assets to contain cashflow impacts?</p> <p>The Respondent asserts that the Applicant’s claims can not be true “<i>by any objective measure</i>” but offers no evidence to support such a broad statement. Ironically, the reference to “objective measure” is precisely the point. There is no objective measure available for the Minister because PMSA is the only entity that holds the raw data which will give an accurate picture of cashflow health.</p> <p>The financial periods that require assessment include periods for which <u>no</u> audited financial statements have been completed by the PMSA . The PMSA also refuses to agree to a confidential by-arrangement by the Auditor-General. Reliance upon data from prior periods in the Respondent’s Submissions does not strengthen its arguments. Furthermore, it negates the Respondent’s assertions elsewhere in its Submissions that the Applicants call for an independent analysis of more recent un-audited data in the possession of the PMSA by the Auditor-General is somehow attacking the integrity of professionalism of the Respondent’s own auditors. How can it, when those reports have not yet been prepared and published?</p>
105	<p>Second, Beyond acknowledges a return of 18% on earnings before interest tax depreciation and amortisation noting that this is an</p>	<p>Submission 105 is misleading. The Applicant restated a public announcement made by the PMSA regarding its claimed growth figures in a footnote to a statement on page 19</p>

⁶⁸ The Supplement page 24.

⁶⁹ The Supplement page 32.

⁷⁰ The Supplement page 14.

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	<p>improvement from the 17% set out in the 2015 figures. This compares to an average ASX return for the same period of 12.5%.⁷¹</p>	<p>of the Supplementary Application. This was never an “acknowledgement” or endorsement of the correctness of those figures. Again, the Respondent is making misleading interpretations out of context. Our statement which referenced the claimed growth figures was made in the context of concerns over material enrolment leakages at PMSA Schools and is extracted in full below:</p> <p><i>“There is significant anecdotal market-based evidence pointing to the existence of: (a) material (and continuing) enrolment “leakage” across most PMSA Schools since late 2017 up to January 2019; and (b) a “plugging” of enrolment leakages by varying means, including the acceleration of ‘future’ enrolments (in many cases involving reduced fee offers or scholarships), which has had the combined effect of “masking” the impact of a <u>true</u> enrolment decline against the Enrolment Baseline. It is submitted that these observations directly contradict the Respondent’s public assertions of a robust enrolment and revenue position at PMSA Schools. It is submitted that any material divergence against the Enrolment Baseline in light of those public pronouncements (which have never been corrected) go directly to issues of organisational trust and the appropriateness of the Respondent remaining incorporated under a legal structure which (due to a lack of a higher standard of regulatory oversight) necessarily <u>requires</u> a higher level of organisational trust in order to operate responsibly.”</i></p> <p>The Applicant then referenced claimed growth rates as follows: <i>“In its letter dated 17 November 2017 to the four school communities, the Respondent stated: “All our schools are in robust financial health and performing to budgeted levels. In 2016, the PMSA oversaw the management of over \$386 million of net assets, returning an EBITDA for the group of 18% (improving from 17% in 2015).” Further, in the same letter, the PMSA stated that: “Our students are not deserting our schools – we are at 98% of target student numbers for 2018 and new entrant numbers remain strong.” The Applicant submits that there is a clear and important difference between the concepts of</i></p>

⁷¹ See <https://www.marketindex.com.au/statistics> (acknowledging that this is not a comparison of identical measures of return the point remains that this an entity that is performing well financially not failing, by objective measures).

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		<p><i>'enrolment numbers' necessary to underpin viable financial performance, 'target' student numbers and 'attrition' of students. Clearly, by way of example, there have been significant and ongoing issues with enrolment numbers at Clayfield College over many years. There are serious questions about the inability of the PMSA to contain the financial issues impacting on Clayfield College across 2015, 2016 and 2017 and it is submitted that there has been a clear adverse impact on enrolment levels at that school and on re-enrolment levels across most other PMSA Schools as a result of the 2017 Events and the 2018 Organisational Response."</i></p> <p>Submission 105 also does not address the financial periods of concern in the Application. The figures pre-date the events of 2017. The financial periods that require assessment against a baseline relate to the 2017 financial period through to the present and <u>include periods for which no audited financial statements have been completed by the PMSA.</u></p>
106	<p>During the twelve-year period 2008 – 2019, the PMSA has experienced periods of enrolment growth and enrolment decline (Ref Fig 1). Variations in enrolment for education providers are not atypical and can be influenced by a range of external and/or internal factors. Set out below are the enrolment figures for a 12 year period from 2008 to 2019.</p> <p><i>[Reference figures not extracted]</i></p>	<p>The Applicant submits that there is no objective and independent basis upon which this data can be verified, but even if it can be so verified, it is irrelevant because the Applicant asserts that PMSA Schools are now on a different and declining financial trajectory post 2017.</p> <p>The Applicant submits that PMSA schools were not faced with the depth of crisis that they now face. To use the Respondent's own terminology, it is not possible to extrapolate past enrolment performance on a "like for like" basis across those financial periods and the period post 2017 primarily because real enrolment positions can not be determined without a correlative analysis of raw tuition fee data which the Respondent refuses to provide for confidential independent analysis by the Auditor-General.</p>
107	<p>Within the competitive education environment, the PMSA continues to deliver excellent education, achieve outstanding student results and maintain significant market share. This submission is not the forum to debate the reasons for the declines in enrolment numbers at Clayfield College. Whatever the reasons they bear no relevance to the corporate</p>	<p>The decline in enrolment numbers at Clayfield College is not disputed by the Respondent. The Applicant has previously questioned the reasons for this, but the main cause for concern is the strategy of the Respondent to correct the decline in a geographic area of the market where other independent schools are thriving.</p>

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	form taken by PMSA.	The Applicant asserts that the future trajectory of Clayfield College is inextricably linked to the ability of the Respondent to restore organisational trust. For the reasons outlined in our Application the recovery of Clayfield College, like all PMSA Schools is entirely relevant to the corporate form taken by the PMSA.
108	<p>The PMSA has ensured good governance and financial management of the group and achieved an operating surplus in each of the last ten years for which audited figures are available (Refer Figure 2). Prudent management of resources has ensured ongoing financial viability of the group.</p> <p><i>[Figure not extracted]</i></p>	The Applicant submits that there is no objective and independent basis upon which this data can be verified, but even if it can be so verified, it is irrelevant because PMSA Schools are now on a different and declining financial trajectory post 2017. Submission 108 is a historical observation that bears no relevance to the financial period in question or the circumstances presently faced by PMSA Schools. It is not “like for like” and should not be treated as such.
109	Third, and notwithstanding the disturbance created by Beyond, the Submission states that ‘the schools are at 98% of target numbers for 2018 and new entrant numbers remain strong’, ⁷² but contest the circumstances at a particular school. That is not grounds for the recall of the Letters Patent. The point being made by Beyond seems irrelevant.	<p>The Applicant has not created a “disturbance”. It has engaged in legitimate public debate and was formed to pursue reforms required due to poor behaviours and decisions of the Respondent. It has fought for transparent answers. The Respondent’s use of language implies that the Respondent has done no wrong. Plainly it has – although it continues not to adequately acknowledge it.</p> <p>The claimed position of the Respondent that PMSA Schools are at “98% of target numbers for 2018” raises two important questions which remain unanswered and which the Applicant asserts constrains the ability of the Minister to form an objective view on the financial failings asserted by the Applicant:</p> <ol style="list-style-type: none"> 1. What was the “target” for 2018?; and 2. How can real enrolment positions be determined without a correlative analysis of raw tuition fee data which the Respondent refuses to provide for confidential independent analysis by the Auditor-General?
110	Fourth, throughout the Submission, a consistent complaint is that PMSA only reports consolidated figures on the four schools. In the section	This statement by the Respondent is a complete fiction. The Applicant has made no such acknowledgement.

⁷² The Submission page 86.

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	<p>under ‘financial failings’ Beyond acknowledges that there are competitive advantages in providing only consolidated figures. Put simply, Beyond therefore acknowledges that this is, or at least could be, evidence of financially prudent decision-making.</p>	<p>At page 5 of the Original Application, Beyond PMSA stated the following:</p> <p><i>“Beyond PMSA has consistently challenged a culture of secrecy that exists within the PMSA. As many of our submissions in this Application challenge the PMSA’s performance as a governing body on numerous measures, we fully expect that, if the PMSA chooses to oppose this Application, it will never agree to its own submissions and evidence in reply being made public, nor will it make full disclosure of its submissions to members of the PMSA Schools communities (particularly in respect of matters concerning its financial performance which remains a matter of acute concern to the entire PMSA Schools communities).”</i></p> <p>In the footnote to the above statement on page 5 of the Original Application, Beyond PMSA made the following further statement:</p> <p><i>“This is because measurable evidence of the PMSA’s track record on financial stewardship is non-existent. The lack of transparency on this issue is directly relevant to perceptions of trust and the future performance and viability of all PMSA Schools. The PMSA consistently maintains through public pronouncements that the fundamental financial position of each individual PMSA School is strong and that they are all viable. We certainly hope that it is. However, it refuses to release detailed individual financial reports (or indeed any financial reports showing material levels of information) on the grounds of confidentiality and on the grounds that doing so would erode the competitive advantage of PMSA Schools in a tight educational market. We submit that this is a nonsense. Many strongly performing independent private schools (such as Brisbane Grammar School and Brisbane Girls Grammar School) disclose significant details in their financial reporting with absolutely no impact on their competitive position, which has been very strong for many decades. We submit that if the PMSA truly has a great financial story to tell that demonstrates an exceptional track record of the PMSA’s financial stewardship, then it would be an asset to disclose it and doing so would only improve its own standing and the competitive position of PMSA Schools. We submit that the PMSA’s arguments in support of its non-disclosure of financial reporting information in this context are a nonsense and are indefensible. We submit that no reasonably minded member of the PMSA Schools communities believes this argument.</i></p>

Item	PMSA Submission	Beyond PMSA Response
		<p><i>We submit that even if the financial position of all PMSA Schools were not as robust as the PMSA have publicly and consistently maintained, admitting to the true position by disclosing that fact and by outlining a clear plan to rectify the position would (contrary to the belief) generate greater goodwill towards the PMSA and re-build much needed confidence amongst the PMSA Schools communities. Sadly, it seems that this will never occur under the present PMSA Council and the PMSA Schools communities will continue to speculate on these matters and the true reasons for the refusal to disclose this information.”</i></p> <p>At pages 85 and 86 of the Original Application, Beyond PMSA stated “precisely” as follows:</p> <p><i>‘The preparation and disclosure of consolidated “group” special purpose reports to the ACNC rather than general purpose financial reports for individual PMSA Schools is another example of “bare minimum” compliance by the PMSA. Their continued refusal to disclose individual school financials on the grounds of “confidentiality” or that doing so would erode the “competitive advantage” of the schools is simply not believed as credible by Stakeholders. We submit that non-disclosure of individual PMSA School financial information does <u>not</u> create a competitive advantage at all (unless the financial story is poor, in which case it merely <u>maintains a perception</u> that the PMSA may wish to create). There is a very clear difference between the two. If the PMSA has a strong financial story to tell which demonstrates their excellence as financial stewards of PMSA Schools (as they appear to claim publicly) then disclosing this in audited, general purpose financial reports for each school would improve the competitive position of those schools <u>and</u> increase the standing of the PMSA itself. We submit that the PMSA’s continued perpetuation of their arguments for non-disclosure are weak and indefensible and undermine community confidence in the abilities of the PMSA Council and their financial stewardship of PMSA Schools. Other schools disclose financial information. The PMSA is a very visible exception to this.⁷³ It also serves to perpetuate growing community concerns over the true financial position of the schools. Whether</i></p>

⁷³ See the link to following list (aggregating information from the ACNC) which discloses details of their financials on the ACNC website, including net surpluses and net deficits, together with their net asset positions. The PMSA is the only organisation on the list of dozens of schools nationally which discloses none of this information at an individual school level AT ALL : https://docs.wixstatic.com/ugd/437c0d_86060453fc8c42688a8df088157d1aa6.pdf . Please also see the blog “Which schools provide financial data publicly? Not PMSA Schools” which is on the Beyond PMSA website at: <https://www.beyondpmsa.com/single-post/2018/02/22/Which-schools-provide-financial-data-publicly-Not-the-PMSA-schools>.

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		<p><i>the questions being asked by Stakeholders on this issue turn out to be based on incorrect assumptions or conclusions being derived from limited available public sources of information is irrelevant. The PMSA is in possession of all of the information required to answer reasonable questions and dispel any concerns and mitigate any impacts arising from continuing interest in the financial health of the schools. Limited public statements by the PMSA dismissing calls for disclosure and providing assurances that “all is well” without tangible evidence to back their statements is rightly viewed by Stakeholders as an insufficient organisational response. As the PMSA choose not to mitigate their position by responding to measured and reasonable calls to release detailed general purpose financial reports, they remain solely responsible for any continued leakage of enrolments and revenues arising from the uncertainty they have created and perpetuated through non-disclosure.”</i></p> <p>There are NO statements by the Applicant anywhere in either the Application or the Supplementary Application that acknowledge that there are “competitive advantage” for the PMSA withholding detailed financial information or reporting on a consolidated basis.</p> <p>The Respondents submission is yet another very concerning example of it attributing incorrect and out of context statements to the Applicant in order to support its arguments. To do this completely distorts and misrepresents the content of the Applicant’s submissions. Submission 110 should be completely disregarded by the Minister as a fiction.</p>
111	<p>Governance of the financial arrangements of the PMSA comply with the <i>Australian Education Act 2013</i> S78 (4). The PMSA has a range of internal policies that govern its internal financial arrangements. Its financial reports are audited. Information supplied to the Non-State Schools Accreditation Board and Department of Education and Training is supplied under declaration and is subject to random audit.</p>	<p>When was the last random audit undertaken?</p> <p>The Non State Schools Accreditation Board do not publish sufficient data on non state schools to parents, and so parents rely on financials published elsewhere – in many cases, by schools themselves. (Section 373 of <i>Education (General Provisions) Act 2006</i> Qld makes financial information provided to Education Queensland and NSSAB specifically confidential). The PMSA reports financial and enrolment data to the Non States School Accreditation Board (which the Applicant assumes must be school by school). The PMSA also reports on a consolidated basis to the ACNC which includes other non school entities such as Grammar Early Learning Centres Limited.</p>

Item	PMSA Submission	Beyond PMSA Response
		<p>Although the Applicant notes that the 2017 School financials are now on the ACNC website, they do not have a lodgement date and it is unclear whether the 2018 financials will be similarly available.</p> <p>The financial data available to the public from MySchool is inadequate due to:</p> <ul style="list-style-type: none"> • Time delays in publication (ie as of 6th April 2019, the most recent <u>enrolment</u> information for Somerville House is Census Date 2017 (February 2017). The most recent <u>financial</u> information is for the year ended 31 December 2016 – a time delay of 24 and 28 months respectively). • Further the financial information displayed on MySchools for each school is inadequate as it only shows: <ul style="list-style-type: none"> ○ Recurrent funding from Federal and State Govt; ○ Fees; ○ Other private sources of income; ○ One form of “general deduction” which does not isolate costs such as employment costs, professional development costs or property costs⁷⁴; ○ “net recurrent revenue” and not “operating profit” which is necessary for parents to determine if the school is operating at a sustainable level for the long term; ○ A limited level of “capital expenditure” but only on a total and accumulated basis. <p>Therefore the MySchool financial data is of little use as a tool for parents to determine whether their child’s school has a sustainable financial future sufficient to complete</p>

⁷⁴ Further this “general deduction” is described as income allocated to current capital projects, income allocated to future capital projects and income allocated to debt servicing.

Item	PMSA Submission	Beyond PMSA Response
		<p>obligations under enrolment agreement.</p> <p>The Applicant also relies upon its comments in response to submission 114 below in relation to submission 111.</p>
112	<p>The issues raised by Beyond regarding financial risk management suggest PMSA must be held to a higher standard than is commonly adopted or expected within the education industry. This is not so and is not relevant to PMSA continuing as a Letters Patent.</p>	<p>Submission 112 is rejected by the Applicant. The Applicant relies upon its comments in response to submission 114 below in relation to submission 112.</p>
113	<p>Consistent with the theme of creating new standards and judging PMSA by the proposed new standard, Beyond suggests a new standard of acceptable evidence. As Beyond explains:</p> <p><i>The Applicant therefore submits that all broad and unverified (non-raw) data offered as evidence by the Respondents of the enrolment and tuition revenue position of the PMSA and PMSA Schools should be completely disregarded by the Minister. (Cost control measures implemented within the last 18 months and supporting the Respondent's statements on financial viability should also largely be ignored because they are "responsive" to the existence of the crisis that the Applicant claims exists).⁷⁵</i></p> <p>And</p> <p><i>The Applicant submits that no other form of interpretive or summary evidence provided by the Respondents on these key issues should be regarded as sufficient to demonstrate the robust financial position that the Respondent continues to publicly assert.⁷⁶</i></p>	<p>The Applicant stands by these statements in the context of its Application and the serious issues of trust which underpin it.</p>

⁷⁵ The Supplement page 15.

⁷⁶ The Supplement page 15.

Item	PMSA Submission	Beyond PMSA Response
114	<p>A final comment which applies generally to the Submission and the Supplement by Beyond, but which is particularly evident in the submission on financial failings, is the impression that somehow the general public, or at least Beyond’s stakeholders, have a right not only to an extraordinary amount of information, but also the right to second-guess and review fundraising issues, risk management issues, resource allocation issues and generally transactions including staffing issues. This underlying premise is incorrect.</p>	<p>The level of financial information requested might be “extraordinary” for the PMSA, but it is certainly not without precedent elsewhere in the independent schools sector, nor is it extraordinary to the PMSA Schools community.</p> <p>The Applicant has already provided examples of best practice financial disclosure practiced by high performing Queensland independent schools, including Brisbane Grammar School. The Respondent is simply out of step with modern community expectations on this point. It fails to recognise the benefits of increased disclosure, presumably because it has concerns over providing more detailed verification of its own reported performance metrics.</p> <p>The request for disclosure is not ultimately an exercise in “second-guessing” decisions. It is necessary to ensure that the PMSA has increased accountability for its decisions. This will naturally contribute to an increase in the quality of its decisions over time.</p> <p>The Applicant has never asked to review transactions involving staffing issues, except in relation to financial settlement arrangements arising from the departure of the former Executive General Manager of the PMSA in late 2017 which, given the circumstances of his appointment were a matter of acute public interest. The Respondent’s statement to this effect is entirely incorrect.</p>
	<p>Child Safety Failings</p>	
115	<p>If there were child safe failings, then repeal of the Letters Patent would neither ‘remove’ nor ‘make easier to fix’, those issues. This is because such failings are not ‘unique’ to Letters Patent entities generally nor PMSA’s form of incorporation in particular. Beyond acknowledges, though, legal compliance with all child safety requirements by PMSA.</p>	<p>The Applicant has never questioned the intent of the PMSA in appropriately dealing with child safety issues. It has questioned the practical effectiveness and implementation of processes and procedures beyond the existence of the Respondent’s “policy” documents. The increased transparency obligations that would emerge as a consequence of a different basis of incorporation would drive a level of organisational improvement in the PMSA that the Applicant asserts would improve child safety outcomes.</p>
116	<p>Beyond references the Royal Commission into Institutional Sexual Abuse of Children (the Royal Commission) but:</p>	<p>The Applicant’s Original Application laid out no such criteria at all. This is another fiction.</p>

Item	PMSA Submission	Beyond PMSA Response
	<p>i. describes the final report of the Royal Commission as forthcoming - even though it was handed down six months before Beyond’s Submission was made to the Minister; and,</p> <p>ii. sets out its own criteria for what is best practice in child safety, making no reference whatsoever to the substance of the Royal Commission’s report.</p>	<p>Our Original Application made the uncontroversial point that all educational institutions can and should expect to see wholesale changes to laws governing child safety, the reporting of it and follow up procedures to ensure the ongoing safety of children following the delivery of the Report.</p> <p>The Original Application went on to state that best practice would be to conduct an immediate review of child safety procedures with a view to implementing new reporting and management practices without delay. It did <u>not</u> set out separate or new “criteria” for the PMSA alone, as the Respondent implies. It referenced a need to comply with the recommendations of the Report.</p> <p>The Original Application made reasonable observations about what affected persons would want to see as a consequence of the proper “practical” implementation of those recommendations and noted that a key theme that aligns with best practice is the satisfaction of those involved in the process and whether the best interests of the victim were prioritised. Other factors for victims that were noted included:</p> <ul style="list-style-type: none"> • the victims’ understanding of the process for responding to reports of abuse; • their expectations of what can be achieved through the response the nature, timeliness and consistency of the response; • their treatment by the person who handled the response (such as whether they were believed and offered support) and that person’s position of authority in the institution. <p><u>All</u> of the above factors were outlined in the Interim Report of the Royal Commission which was handed down prior to the final report. They are <u>not</u> newly created or controversial. The Respondents comment about the date of the release of the Final Report is noted, but adds nothing to its submission.</p> <p>Our comments underscored a genuine belief that best practice does not appear to have been achieved in relation to the examples mentioned in our Original Application and that there was considerable room for improvement. There are many more historic examples where victims have felt dissatisfied by the available procedures.</p>

Item	PMSA Submission	Beyond PMSA Response
117	PMSA has regard to the Royal Commission, not the Beyond commentary in forming a view of what is best practice for child safety. PMSA treats child safety and protection as its highest priority.	The Applicant has never questioned the intent of the PMSA in appropriately dealing with child safety issues. It has questioned the practical effectiveness and implementation of processes and procedures beyond the existence of the Respondent's "policy" documents.
118	PMSA's current policy framework was developed under the leadership of an appropriately qualified Board member. The PMSA has a dedicated Child Protection Advisory Committee that reports to the PMSA Board. There has been a complete and comprehensive independent review of all PMSA policies and procedures to ensure total compliance with relevant legislation and alignment with the 10 Child Safety Standards developed by the Royal Commission.	The Respondent's submission completely ignores the central theme of the Applicant's arguments. The Applicant has never questioned the Respondent's "intent" in pursuing best practice child safety procedures. Our argument has always been that its structure creates and maintains risks that impede proper implementation of policies. A child protection framework is much more than simply a "process" and set of written "policies" that meet criteria at the surface level. It requires effective implementation. The measure of how well those policies and procedures are being implemented must always be determined by the "customer" experience. Recent events at a number of PMSA Schools (which were previously publicised in the media and which were outlined in our Original Application) have demonstrated a lack of satisfaction with outcomes for alleged victims and their families. We have already traversed these issues in the Original Application and do not propose to repeat them again here.
119	The assertion by Beyond that 'PMSA appears focussed on covering liability of the organisation and less focussed on providing a safe environment' is baseless and incorrect. ⁷⁷ In late 2018 the Non-State Schools Accreditation Board requested a copy of the PMSA's overarching Child Protection Policy following an anonymous complaint to them. They were completely satisfied that the policy meets all required standards and closed the complaint accordingly.	Again, this misses the point of the problem entirely. A review by NSSAB of the Child Protection Policy would not have addressed issues of implementation or our arguments over structural risks. It is not the "documents" and the "policies" that are the problem, it is the complaint structure and the lack of a unified single point of accountability for aggrieved parents to resolve issues. Effective practical implementation must always exist alongside process, policy and "intent".
120	PMSA publishes a range of policies in relation to risk management and complies with all legislative requirements for reporting including: <i>Australian Education Act 2013</i> <i>Education (Accreditation of Non-State Schools) Act 2017</i> <i>Australian Charities and Not-for-profits Commission Act 2012 Child</i>	No response is required to this submission. The Applicant relies upon the comments above in response to submissions 117 and 118.

⁷⁷ The Submission page 93.

Item	PMSA Submission	Beyond PMSA Response
	<p><i>Protection Act 1999, and Work Health Safety Act 2011.</i></p>	
121	<p>We mentioned earlier that the Churches amended the PMSA Constitution and that part of this was to address reporting of child safety issues. The relevant amendment is in Section 9.3 subsection 1 and reads (so far as is relevant):</p> <p>9.3Material change reporting <i>(1)The PMSA will report to the Churches any adverse material changes. Without limiting the generality of this clause, the following are likely to be adverse material changes that must be reported by the PMSA under this clause:</i></p> <p><i>(a)allegations of physical, psychological, emotional or sexual abuse or exploitation against a Board Member of the PMSA or a teacher, Chaplain or staff of a PMSA School;</i></p> <p><i>(b)substantiated complaints of a breach of PMSA policies or guidelines including an abuse policy, Blue Card (working with children) policy, child protection policy, homestay welfare and accommodation policy, child protection and risk management policy, anti discrimination policy, work health and safety policy or this Constitution;</i></p>	<p>Surely this should have been the case in any event? Regardless, it provides a level of disclosure which is unlikely to improve practical resolutions which satisfy potential victims and their families in circumstances where the Churches are unlikely to engage or intervene.</p> <p>By their own admission in their separate Submission to the Minister, the Churches claim that they do not act as ‘shadow directors’. If that is the case, then what purpose can such a provision serve and what “influence” do the Churches propose that they will exert over the PMSA as a consequence of it in response to issues of child safety? It can serve absolutely no purpose which would provide comfort to potential victims or their families if the Churches continue to maintain that position. The “material change reporting” provision must simply to be viewed as precisely that – a “reporting” mechanism for internal due diligence and risk management purposes benefiting the Churches, with no ancillary or secondary recourse objectives. It is an irrelevance to PMSA School communities.</p>
122	<p>In relation to child safety Beyond has again created a new standard to be imposed upon PMSA and then judged PMSA by that standard, as it did in matters of conflict of interest. It is not enough for PMSA to be fully compliant with the law. It is not enough for PMSA to do the additional things mentioned above. Beyond explains its position in the following terms: ‘The Applicant simply asserts that the existing frameworks and policies are insufficient, require improvement and cannot be properly and effectively implemented’ unless the Letters Patent are recalled.⁷⁸</p>	<p>The Applicant makes no apologies for demanding better. The Respondent should be aspiring to a much higher standard. Our continuing argument has and continues to be that “celebrating” bare minimum legal compliance is not appropriate given the events which occurred in 2017 and which have contributed to the need for our Application to be lodged.</p>

⁷⁸ The Supplement page 27 footnote 41.

Item	PMSA Submission	Beyond PMSA Response
	Cultural Failings	
123	<p>If there were cultural failings, then repeal of the Letters Patent would neither ‘remove’ nor ‘make easier to fix’, those issues. This is because cultural failings are not ‘unique’ to Letters Patent entities generally nor PMSA’s form of incorporation in particular. Further, cultural failings generally, but particularly the alleged cultural failings set out across the 15 pages of the Submission, cannot be a basis for recall of the Letters Patent nor for requiring change of legal form. If cultural failings do not convert into breach of legal obligations then there are no rights whatsoever. If cultural failings do convert into legal obligations then those legal obligations should be enforced according to the particular law in question. They do not, in and of themselves, warrant acquiescence to the Beyond Application.</p>	<p>The Applicant has never asserted that cultural failings are “unique” to Letters Patent entities. However, significant cultural failings are unique to the PMSA. Over 100 years, its unique structure has enabled it to evolve to a point where, culturally, it is incapable of delivering respectful change. Of all of the failings of the PMSA that have been outlined in the Application, the Applicant has consistently submitted that:</p> <ul style="list-style-type: none"> (a) the poor culture of the PMSA has been directly enabled by the existence of the PMSA’s Letters Patent; and (b) the most profound and lasting impact that the recall and cancellation of the PMSA’s Letters Patent and its incorporation under the AI Act will have upon the PMSA and PMSA Schools is will be the positive change to the poor culture that presently exists within the PMSA and which has evolved and because of the distorted value that the PMSA Council has placed on its Letters Patent over many decades⁷⁹. <p>We submit that the recall and cancellation of the PMSA Letters Patent will lead to a change in the current mindset of the PMSA regarding its accountability to stakeholders and drive positive change its current views about accountability, transparency and genuine respect for Stakeholders. It will result in an improved governance framework that will challenge the current “Group Think” mentality that exists at the PMSA Board level and which (we submit) constrains quality decision-making.</p> <p>Extensive details and examples of the poor culture of the PMSA have been set out in the Original Application. For brevity, we do not propose to address each of the identified cultural failings in this document.</p>

⁷⁹ See discussion in 2.2.2.2 of the Original Application.

Item	PMSA Submission	Beyond PMSA Response
PART D – THE STEPS TAKEN BY PMSA TO INCREASE ACCOUNTABILITY AND TRANSPARENCY		
124	<p>The threshold point made is that PMSA is fully compliant with all legal obligations regarding accountability and transparency. Beyond have made many allegations but have not set out any evidence. Even if evidence was produced, though, such evidence would not be grounds for recall of the Letters Patent nor for requiring PMSA to become an association. Non-compliance could arise under any legal form.</p>	<p>The Applicant rejects this submission. The Applicant has set out in considerable detail the structural failings giving rise to an absence of transparent and accountable behaviours. Sufficient grounds do exist across all areas of identified failure to establish grounds for the Application being granted.</p>
125	<p>The next substantive point to make is that before Beyond raised issues, the Churches were already considering a new constitution for PMSA. The idea of building the concept of a Visitor into the new constitution was under discussion between the churches from at least 2014. The concept of a Visitor is a recognised tool for improving accountability and transparency and the concept did find its way into the new Constitution.</p>	<p>This has been repeatedly claimed by the PMSA. The recent amendment to the PMSA’s own Constitution does embed “visitation” rights for the Churches to the PMSA at any time, and other amendments do provide for greater reporting obligations to the Churches. However, this does little to improve transparency for the community, nor does it resolve the issue of accountability under a divergent joint mission with no single point of accountability. It does, however, ironically complete the pathway for a greater level of Church involvement in operational decisions of the PMSA which they claim does not exist. The community is rightly confused by these conflicting structural signals.</p>
126	<p>PMSA has demonstrated over time that it is a responsive, agile and proactive organisation, seeking out opportunities (independent of external pressure) to improve its performance and governance. The recent external governance review, and constitutional reforms are examples. The process for establishing a new Constitution involved a significant collaboration between the Presbyterian and Uniting Churches and the PMSA, the end result (the new Constitution) is a demonstration of functional and effective working arrangements.</p>	<p>The PMSA is neither agile nor proactive. The assertion that it is now (or that it has been so historically) is rejected by the Applicant. It is submitted that the overwhelming majority of the PMSA Schools community would completely disagree with this characterisation. The massive public rejection of the PMSA in 2017 and the Applicants’ petition which was signed by over 2000 people in late 2017 clearly demonstrate the extent of community opposition to this assertion. Many would consider it astounding in its lack of self-awareness.</p> <p>If the PMSA and the Churches have been involved in “<i>significant collaboration</i>” on constitutional reform, then those endeavours have been neither visible to the PMSA Schools community, nor have they translated into materially visible and practical reforms. It is submitted that the Constitutional reforms announced in late 2018 were limited in terms of positive practical effects on the PMSA and PMSA Schools. They were delivered for no other reason that as a result of the significant public pressure</p>

Item	PMSA Submission	Beyond PMSA Response
		that was placed on the PMSA and the Churches. It is simply incorrect to characterise the PMSA as proactive. It is “reactive”, and reluctantly so.
127	<p>The PMSA Audited Financial Statements are prepared in accordance with Australian Accounting Standards. These statements comply with:</p> <ul style="list-style-type: none"> • Association Incorporations Act 1981; • Australian Education Act 2013; • Education (Accreditation of Non-State Schools) Act 2017; and • Australian Charities and Not-for-profits Commission Act 2012 	<p>Base level compliance with the requirements of these organisations is not disputed. However, the Applicant maintains that the PMSA’s predicament dictates that it must:</p> <ol style="list-style-type: none"> 1. adopt general purpose financial reporting rather than special purpose financial reporting which is a lesser standard; and 2. increase its own level of disclosure. <p>The Applicant has always submitted that, for the PMSA, bare minimum legal compliance is an insufficient and lazy response to the commercial crisis that it has created and does nothing to rebuild the organisational trust that has been destroyed. It is actually in the PMSA’s own interests to increase disclosure, provided that its existing statements on the financial health of the entities comprising the PMSA Group are accurate. Not taking this step will continue to undermine enrolment growth and will continue to act as a “drag” on donations to PMSA Schools.</p>
128	<p>The Accounting Standards and Policies adopted by the PMSA are best practice and exceed the minimum requirements of the Standards. Of significance is the Property Policy in which the PMSA has adopted AASB116 (31) Revaluation model, rather than the less onerous AASB116 (30) Cost model. Adoption of this policy improves the veracity of Financial Reports and delivers a higher standard of financial reporting than required for compliance. This also improves the financial information on which the PMSA Board decision-making is based.</p>	<p>The issue has less to do with adoption of accounting standards. It has everything to do with what the Applicant asserts should be higher levels of reporting and disclosure. The PMSA fails to recognise that its continuing adherence to lower levels of disclosure is stalling the recovery of PMSA Schools.</p>
129	<p>In the Supplement Beyond calls for the appointment of the Auditor General to investigate PMSA. The reason given is to establish ‘the true position’.⁸⁰ No evidence of untruth is provided. Further, though, the inference must be taken that the PMSA Auditors are not discharging their</p>	<p>This is precisely the point. The level of disclosure by PMSA does not provide sufficient information for either the PMSA Schools community or the Minister to be able to objectively determine the veracity of the PMSA’s accounts and the financial position of individual schools.</p>

⁸⁰ The Supplement page 6.

Item	PMSA Submission	Beyond PMSA Response
	<p>duties. The other entities supervising PMSA (such as the Non-State Schools Accreditation Board and the Department of Employment and Training and also the ACNC) possibly to whom Beyond may have sought to complain, must also not be properly discharging their functions. There is simply no basis for involving the Auditor General in this complaint.</p>	<p>The Applicant has never asserted that the PMSA’s auditors are not discharging their duties. Such an assertion would be preposterous without evidence to the contrary. The Respondent’s assertions that the Applicants call for an independent analysis of more recent un-audited data in the possession of the PMSA by the Auditor-General is somehow attacking the integrity of professionalism of the Respondent’s own auditors is also rejected. How can it, when those reports have not yet been prepared and published?</p> <p>Regardless, the Respondent’s statement is a lazy defence for the following reasons:</p> <ol style="list-style-type: none"> 1. The Respondent knows full well that auditors rely upon the quality and accuracy of information provided to them in forming their conclusions. 2. The audit reports prepared for PMSA are not unqualified audit reports. 3. The audit reports are ‘special purpose’ and not ‘general purpose’ financial reports, which the Applicant asserts is the more appropriate standard to apply to PMSA and PMSA Schools. 4. A number of recent audit reports of the PMSA Group have specifically contained going concern warning statements. The PMSA’s Auditor noted that the PMSA had breached a loan covenant and expressed “Going Concerns” reservations in the 2015 Audit reports. Going concerns were raised by the same Auditor in the 2016 PMSA Reports. (It is understood that the same auditors were not retained in 2017?) Ironically, these warnings occurred in the same period of remarkable financial “health” that the Respondent lauds as evidence of its strength, but their occurrence has never been publicly explained by PMSA, despite public calls for them to do so. 5. A number of significant asset revaluations have recently occurred and have been contained in the 2017 accounts. 6. The non-current debt position of PMSA Schools and therefore the PMSA

Item	PMSA Submission	Beyond PMSA Response
		<p>Group has significantly increased as evidenced by the last set of Financial Reports for the Schools for the 2017 Financial Year lodged with the ACNC (which, by coincidence, are the ONLY reports which have <u>ever</u> been separately publicly disclosed on the ACNC website).</p> <p>With regard to the Respondent’s further casual assertions that the Applicant is making accusations of the Regulators not discharging their functions, we have never made any such accusations. We have already expressed a view about the more limited functional role of the ACNC. Regardless, it is not unusual for regulators to only become involved in a more extensive investigation into the operations of entities within their area of regulation upon the lodgement of complaints. It should not be lost upon the Minister that, for example, the Auditor General has recently undertaken a review of 76 Independent Schools in Queensland which discovered significant anomalies in reporting across a number of schools, with evidence of insufficient controls for data and which had corresponding implications for accuracy of reporting for the purposes of financial grants. No organisation is bullet-proof.</p> <p>Furthermore, the financial information that the PMSA relies upon in support of its submissions in response to our Application relates to periods which largely precede the serious events of 2017 and the organisational response in 2018. Audited accounts for the periods of concern do not exist yet. Previous figures do NOT exonerate the Respondent or its reform decisions. It is the period of financial reporting from 2017, 2018 and 2019 financial years that will be most relevant to the claims set out in our Application, but a reasonable period preceding 2017 is required for “baseline” purposes. Given the concerns raised in this Application, there is an urgency for this raw data to be independently reviewed, and acted upon where the results demonstrate a decline in the financial trajectory of the schools..</p>

Item	PMSA Submission	Beyond PMSA Response
PART E – COMMENTS ON LETTERS PATENT GENERALLY		
130	<p>Incorporation under the Religious Education and Charitable Institutions Act 1861 remains a valid form of incorporation in Queensland. Some may have the view that it is an antiquated form and should be abolished but until such time as the legislation abolishing the form is passed by our Parliament, it is for the charities themselves to decide whether or not they wish to remain incorporated under it.</p>	<p>When the AI Act was introduced into Parliament, it was stated that the <i>Religious Educational and Charitable Institutions Act 1861 (Qld)</i> was ‘not good enough administratively to cope with today’s problems’.⁸¹ Although, the Queensland Law Reform Commission recommended that the <i>Religious Educational and Charitable Institutions Act 1861 (Qld)</i> should be retained to operate alongside the new AI Act, on the basis that it had fulfilled a distinct need for certain religious organisations, specifically to maintain privacy⁸², the retention of this archaic basis of incorporation was clearly a cause for concern for regulators. It remains so to this day. The Applicant submits that, for a large and more complex organisations like the PMSA group of schools which is charged with the education of children (and which has a very large community of people who are directly interested in the proper functioning of the organisation (but who, according to the Respondent’s own submissions, have no legal standing to bring any issues of concern or to lodge any dispute with the Attorney General over their proper functioning)) it is an entirely inappropriate structure in 2019.</p> <p>That position however is NOT the basis of this Application. Our Application is founded on the unique structural inability of the PMSA to operate as a trustworthy entity under a Letters Patent structure, and which has been demonstrated by decades of poor conduct culminating in the disastrous events of 2017.</p>
131	<p>The mechanism provided under Section 131 is intended, we submit, to enable conversion to an association, not to compel it. That has been the precedent and for reasons set out in Parts A and B, is well founded.</p>	<p>This statement is legally incorrect and does not support the construction of the section at all. The fact that some entities may have taken advantage of section 131 to undertake a voluntary conversion does not change the intended character of the provision or the nature of the Minister’s discretionary powers. If it were intended to be a “voluntary” mechanism for RECI Act entities, then it would have been constructed in precisely the same manner as section 106H (which IS a voluntary mechanism for transition to a corporation limited by guarantee). It is NOT. The Respondent’s submission on this point is not supported by applying accepted principles of statutory</p>

⁸¹ Queensland, Parliamentary Debates, Legislative Assembly, 7 May 1981, 1031 (SS Doumany, Minister for Justice and Attorney-General).

⁸² Associations Incorporation Report (1980) 10–11.

Item	PMSA Submission	Beyond PMSA Response
		<p>interpretation and also ignores the parliamentary debate and second reading speech for the AI Act when it was passed, which clearly evidences the intent of the clause as one which provides a discretionary power to the Minister to compel transition to an incorporated association. It also observed the very archaic and undesirable nature of Letters Patent as a continuing method of incorporation.</p>
132	<p>If compulsory conversion were to be contemplated, we submit it would only be in circumstances where there are egregious breaches of the law which could not be adequately remedied by any other compliance mechanism.</p>	<p>The Applicant rejects submission 132. The Respondent is asking the Minister to accept that the discretion afforded to her under section 131 must be constrained to an unacceptably high standard before stakeholders with legal rights who are affected by organisations operating under governance failure and mismanagement have access to recourse and protection.</p> <p>The test should not be an ‘egregious’ breach of the law. Requiring a breach of the law that is “outstandingly bad” or “shocking” (because that is the standard that the Respondent clearly applies in its submission) sets an inappropriate standard for the exercise of the Minister’s discretion. The Applicant re-states its assertion that the Minister’s discretion should not be constrained to only permit it to be exercised once the car has “gone over the cliff”. Evidence of a dangerous trajectory that is not being adequately rectified is sufficient. The Applicant asserts that this will be demonstrated by the outcome of the by-arrangement audit proposed by it.</p>
133	<p>This has been the view taken, it would seem, by Ministers throughout the history of the AI Act and it is a view consistent with Queenslanders living within a rule of law democracy where their rights are not to be ignored or overridden by the ‘force’ of sectional interests, however well-intentioned that ‘force’ might be. This goes to the heart of the distinction between government role and the role of charities.</p>	<p>This is a very interesting question indeed. Precisely whose “rights” are most affected by the granting or refusal of this Application? The PMSA would argue that it is only the PMSA’s rights that are affected because no other form of “rights” exist within the community at all. That is effectively the foundation of their Submission. It is a position which the broader community should be exceptionally shocked to hear.</p> <p>The Respondent argues that it will be placed in a position of significant difficulty or disadvantage if this Application is granted and that its “rights” to remain incorporated under Letters Patent are paramount.</p> <p>The Respondent makes continuing reference to the concept of being “forced” to re-incorporate and that this impinges on its own rights. At the same time it continues to ignore the broader rights of the majority in the community that it provides services to.</p>

Item	PMSA Submission	Beyond PMSA Response
		<p>The very community of existing and potential “customers” that it seeks to retain and grow in order to support the continuation of its charitable purpose. We submit that this is an exceptionally narrow approach to business development, and one of the fundamental reasons why the Respondent will face continuing challenges in the years to come to pull itself out of the business crisis that it has created.</p> <p>The Respondent also suggests that those supporting this Application represent “sectional” interests. For the numerous reasons set out in our Application and elsewhere in this final submission document, this assertion is not only entirely fictional, it is implausibly “hopeful”. The strength of community support behind the Applicant’s endeavours and this Application is substantial. We need make no further comment upon it.</p> <p>Finally, the Applicant submits that our democratic system exists to protect ALL Queenslanders. In that regard, it is appropriate to remember that the PMSA consists of a group of approximately 12 volunteer Board members supported by a handful of corporate administration staff. If this Application is not granted, then it would seem that the PMSA’s “rights” to remain incorporated under Letters Patent ought to prevail over the interests of more than 5000 members of the community it serves. In other words, the form of the PMSA’s incorporation is more important to it than the needs and expectations of the very community that it was established to serve, and which has provided the financial platform for it to exist and grow over 100 years.</p>
134	<p>It is the function of government to provide quasi-public goods such as education for the majority. Muukkonen conveniently summarises the founder of modern non- profit economics, Burton Weisbrod, on this point in the following way:</p> <p><i>Weisbrod argued that the government is willing to provide public goods only to meet the needs of the majority. ... There are, however, special needs that governmental services do not fulfil as in the case of ethnic and</i></p>	<p>Is the PMSA suggesting that it supplies services to a minority?</p>

Item	PMSA Submission	Beyond PMSA Response
	<p><i>linguistic minorities. This creates the need for many specialised services because the government does not supply them.</i>⁸³</p>	
135	<p>The education in a Christian environment supplied by PMSA is the classic example of a quasi-public good supplied by a charity that emerged to meet a particular (special) need. It is for the supplier, PMSA, to decide when, how, and in what way it supplies its ‘specialised services’ of education, and parents may choose to avail themselves of the supply or not. Provided the PMSA complies with the law including educational standards, it is not for the state, through the Minister, to engage in how the charity governs itself including its form of incorporation. This is a concept fundamental to the independence of charities and respect for those who may wish to not avail themselves of services supplied to the majority.</p>	<p>This reinforces the unfortunate characterisation of the schools communities as “customers with choice”. However, the concept of “choice” becomes limited when one considers the considerable financial investment that parents make in these schools. Why should parents be alienated from recognition as a valid stakeholder group in these institutions in circumstances where their children, in many cases, have formed friendships and connections within the community within which they are educated, and for which they have invested many hundreds of thousands of dollars?</p> <p>The idea that the PMSA should not be accountable through the highest standards of governance to parents and students (both present and past) is not consistent with modern standards of governance in education or its higher moral duty to do so. It is a flawed foundation for a successful business model and demonstrates why the purpose underpinning this Application is not just legal, but also to “save the PMSA from itself”.</p> <p>If the “customer” is consistently told that it is not only wrong, but that its opinion on the product being offered is not valued (or comes in second to the preferences of the supplier) – the customer will leave and never return. Beyond PMSA has been receiving feedback from many many past students of PMSA Schools who, precisely because of the events of 2017 and the failed organisational response of 2018 are actually NOT considering sending their children to PMSA Schools. The trend that we are observing from our extensive connections within the PMSA School communities is alarming. For past alumni to cast aside connections and loyalties to schools that they once loved attending in order to “choose” a different path for their own children is unprecedented. Any business manager and marketing expert will tell you that retaining existing customers is much easier than attracting new ones. If the Respondent is failing to retain the loyalty of “low hanging fruit”, then it will certainly be challenged in attracting new customers in coming years in an increasingly competitive market with the simultaneous prospect of material reductions in government funding due to changing government priorities in the education sector. That dynamic places PMSA Schools at</p>

⁸³ Martti Muukkonen, The Familiar Unknown - Introduction to Third Sector Theories (Licentiate Thesis, University of Joensuu, 2000) 102-103.

Item	PMSA Submission	Beyond PMSA Response
		significant risk under their current reform model.
136	In summary then, for so long as Letters Patent entities comply with the law there can be no grounds for even considering recall of the Letters Patent and compulsory conversion to an association. Even where there is a breach of the law the Minister should only act where there is egregious behaviour and when no lesser legal remedy is available.	The Applicant rejects submission 136. The Applicant relies upon the reasoning set out in response to submission 132.
PART F – ‘FORCE’ AS THE MEANS TO THE (TRUE) OBJECT		
137	<p>Beyond makes it clear that its true object is not the recall of Letter Patent and the compulsory conversion to an association but rather a public explanation by PMSA of its decisions. Further it states that “force” is its method of achieving this. It explicitly states in the submission that:</p> <p><i>Beyond PMSA’s objective was to “force” the PMSA into a public explanation of its decisions</i>⁸⁴</p>	<p>This is yet another ‘selective’ quotation of a statement from the Application that is taken out of context and elevated by the Respondent to some position of prominence in its Submission.</p> <p>The precise wording referred to by the Respondent omits the substantive words surrounding it, which provide the proper context. The relevant statement was provided in the final section of the Original Application to give a historical account of the circumstances leading up to the submission of the Application and had absolutely nothing to do with the lodgement of this Application, which is founded on an objective which was made clear at the very first meeting when Beyond PMSA was formed by the community in late 2017. The wording is precisely as follows:</p> <p><i>“In late 2017, Beyond PMSA initially refused to engage with the PMSA (which to that point had refused to speak with ANY member of the PMSA School communities who questioned its actions or authority). Beyond PMSA’s refusal to engage with the PMSA at that time was strategic. The PMSA’s behaviour and past history of disrespectful non-engagement on issues of reform presented no other viable option.</i></p> <p><i>Beyond PMSA’s objective was to “force” the PMSA into a public explanation of its decisions, to seek a genuine apology from them for the PMSA School communities, and</i></p>

⁸⁴ The Submission page 136.

Item	PMSA Submission	Beyond PMSA Response
		<p><i>to encourage them to start proper, respectful community engagement on issues of governance reform. At the same time, Beyond PMSA sought direct and respectful dialogue with the Moderators of the Uniting and Presbyterian Churches in an effort to encourage them to assert direction an influence over the PMSA’s approach. Neither Church elected to take up our request for direct dialogue, preferring to express confidence in the PMSA’s own ability to address the crisis of its own making. That position was never going to appease an angered community and unfortunately served only to increase public scrutiny and criticism of the PMSA from many and diverse quarters in addition to Beyond PMSA. Sadly, it also reinforced the strong view of the paralysing political dysfunction that exists in the joint mission which has enabled the PMSA Council to evolve into an organisation that places no value on accountability and transparency, and even less value on recognition of, and respect for, Stakeholders.”</i></p> <p>The context of that statement was not in fact a reference to this Application at all. It was a reference to a prior series of actions, statements and public meetings which was designed to elicit a response from the PMSA and the Churches in circumstances where they had completely shut the community out and refused to engage at all, except behind closed doors with school representative groups who were not allowed to discuss their interactions with the wider school communities. The authors of the Respondents Submission have either failed to realise that or have not had that flawed understanding corrected by the members of the PMSA Board who were serving in late 2017 and into early 2018.</p>
138	The subtext of this statement (open to the Minister to infer - if the plain words are capable of other meaning) is that this complaint to the Minister, is a part of that overarching objective.	There is in fact no subtext attributable to that statement of the kind implied by the Respondent for the reasons outlined in response to submission 137 above.
139	The capacity of Beyond to apply this ‘force’ is made clear also in the following terms as Background: We are led by a strong team of highly educated, successful and motivated stakeholders with robust backgrounds and expertise in education, finance, corporate governance, communication, organisational structure	That Beyond PMSA is comprised of educated and professional people with appropriate and relevant experience in modern and effective corporate governance is not disputed.

Item	PMSA Submission	Beyond PMSA Response
	<p>& design, law, project management, corporate strategy, property and investment. We are very well funded and highly energised to achieve our objectives.⁸⁵</p>	
140	<p>If the Minister was to form the view that the Application was part of a strategy to “force” the PMSA, its councillors and staff to do things that they are not legally obliged to do, it would be inappropriate for the Minister to acquiesce to that Application.</p>	<p>The value of this submission escapes the Applicant. The purpose of this Application is not to force the Respondent to do things that it is not legally obliged to do. (Although we passionately believe that the circumstances that the Respondent has created and which have been exceptionally detrimental to PMSA Schools demands that they exceed base legal obligations and strive to become an organisation that exhibits worlds best practice).</p> <p>Our object is to deliver an outcome that results in the PMSA having a platform upon which it can build a better organisation that is capable of achieving success for PMSA schools and repairing the considerable damage that the Respondent has inflicted. It cannot do that under Letters Patent when it is simultaneously constrained and affected by the dysfunctional joint mission that lacks a single point of accountability. Since removing the structural dysfunction above it seems unlikely to change in the near future, the one component which can be addressed through rational action is the removal of Letters Patent.</p> <p>On that basis, if the Respondent charges that we are attempting to “force” a change to its incorporation, then we agree. However, that is not a matter which should influence the Minister’s decision to grant this Application. Indeed the entire purpose of <u>any</u> legal application is to achieve a decision or an outcome which requires one party to comply or concede to a position which, prior to the point of the application being made, it has not been willing to do.</p> <p>For the record, Beyond PMSA has made every reasonable attempt to afford the Respondent adequate time to at least consider the merits of change, and it has bluntly refused to do so. To argue in those circumstances that the Applicant has acted inappropriately in subsequently bringing this Application or that its objectives are somehow different and taint this Application is blatantly wrong.</p>

⁸⁵ The Submission page 135.

Item	PMSA Submission	Beyond PMSA Response
PART G – MEDIATION HAS BEEN TRIED		
141	<p>PMSA agrees with Beyond that further mediation would not be of assistance. As Beyond acknowledges, the churches facilitated mediation with one of Queensland’s most experienced legal mediators, retired Justice Richard Chesterman QC, in relation to issues focused on Somerville House. That mediation did not lead to any meaningful outcomes that have satisfied Beyond.</p>	<p>The Applicant <u>strongly</u> disputes the fact that any <u>authentic</u> and inclusive mediation has been tried at all. The “mediation” that the Respondent refers to was a closed discussion with representative groups at only one school. Although submissions were called for, we are not aware that any on themselves who made submissions were provided with responses or real acknowledgements of their receipt. In fact Beyond PMSA’s 180 page submission was not even acknowledged at all. There was no report that was produced and disclosed to the community. The representative groups that were invited into discussions with Mr Chesterman were not permitted to discuss the proceedings with anyone externally. Furthermore there was no discernible outcome from the process. The Churches described it as a ‘healing’, but it achieved nothing of note – only confusion and frustration for not delivering a tangible outcome. It was a failed process, not because of Mr Chesterman, but because of the ineffective scope and purpose that defined it.</p> <p>It is a complete fiction that “<i>it did not lead to any meaningful outcomes that have satisfied Beyond</i>” for the reason that we were never authentically involved in the process and our detailed submission was never acknowledged or responded to. Additionally, none of the school representative groups that were engaged in the process provided active support to any of the outcomes because they saw it as a guided process in which the PMSA effectively demanded acquiescence to carefully scripted public announcements that everyone was “happy” with the process and would now move forward. We are informed that was never the case.</p>
142	<p>Between the months of June and December 2018 Representatives Greg Adsett and Morgan Parker of the PMSA met with Beyond on three occasions. In August 2018 Sharon Callister was appointed as the new CEO of PMSA. Ms Callister also met with Beyond representatives on two occasions. Those discussions have not resulted in resolution of Beyond’s grievances.</p>	<p>Correct. But what the Respondent has failed to state is that our requests were twofold:</p> <ol style="list-style-type: none"> 1. That the PMSA announce publicly that it would undertake an objective and balanced review of the merits of remaining under a letters Patent versus moving towards a more modern basis of incorporation; and 2. On the basis of having undertaken the review outlined in 1 above, the PMSA make a decision on the issue of Letters Patent by the end of November 2018

Item	PMSA Submission	Beyond PMSA Response
		<p style="text-align: center;">and explain the decision to the community.</p> <p>Beyond PMSA materially stood down from public comment on the PMSA’s reform agenda and processes for approximately 6 months in the good faith expectation that the PMSA would commence and complete an objective review of its incorporation, taking into consideration the benefits and risks to PMSA Schools of both alternatives. The PMSA initially failed to honour the first request, and Beyond PMSA considered that it would need to push ahead with its Application as a consequence of that disappointment.</p> <p>When the PMSA reluctantly and hastily acquiesced through an announcement that satisfied the first request, Beyond PMSA continued to honour its commitment to stand down from material criticism of the PMSA’s reform process. To our great disappointment, the PMSA not only failed to make a decision on Letters Patent in late 2018, it failed to commence and undertake any review of its incorporation at all – completely dishonouring the good faith negotiations that had preceded it.</p> <p>We should point out that, although Beyond PMSA always considered the possibility that it may move forward with this Application the second requirement set out above did NOT “demand” a decision one way or the other. Our first and most important objective was to encourage the Respondent to take appropriate advice (which was not simply limited to legal advice, but broader advice on the business and organisational benefits). The staunch refusal to do so is the real cause for our continued ‘grievance’ because we consider that the refusal is damaging future prospects for the repair and improvement of PMSA Schools.</p> <p>In short, the PMSA ultimately conceded “nothing” and their subsequent inaction clearly ensured that the discussions never really took on the character of a “mediation” at all for that reason. It is therefore a complete mischaracterisation to refer to them as such.</p> <p>Although we continue to believe that those representatives that we met with DID hold a genuine desire to achieve a common solution, clearly the broader PMSA organisation and the Churches above it had no interest in a mediated solution involving Beyond PMSA at all. Their objective was to delay continued public debate by the Applicant so</p>

Item	PMSA Submission	Beyond PMSA Response
		<p>that they could push ahead with an unsupported reform agenda and seek to implement it as quickly as possible in the hope that doing so would:</p> <ol style="list-style-type: none"> 1. undermine this Application; and 2. further entrench their role and governance “solution”. <p>The PMSA’s deliberate inaction in those circumstances define the PMSA’s continued approach to stakeholder engagement in the most disappointing manner. Even more so, because the Applicant was approached by the Respondent to meet with them, and we reluctantly accepted in the hope that their interest in meeting and discussing a path forward would be genuine. Clearly it was not.</p>
143	It is difficult to see how the issue can be resolved by any method other than a decision of the Minister.	Given the character of the Respondent’s engagement in discussions with the Applicant to date, we agree. The inaction of the Respondent clearly demonstrates that the broader organisation was NEVER invested in the discussions.
PART H – WHO IS BEYOND PMSA?		
144	If the Minister was minded to order mediation, the Minister would be required to identify who is the Applicant and who would pay for the mediation. It is not clear who or what constitutes Beyond PMSA.	It is entirely clear who Beyond PMSA is. The Applicant relies upon its response to submissions 145 to 152 below.
145	Beyond PMSA could be: a. an unincorporated “group”; b. the company called Beyond PMSA Pty Ltd; or, c. an incorporated association called Change and Beyond Incorporated.	The legal entity is the incorporated association described in (c). The legal entity represents the interests of a group of over 4000 persons who are actively interested in the welfare of PMSA Schools and who support the position espoused by the legal entity.
146	The Submission: i. states that it is prepared by Beyond PMSA on the cover: ii. begins: This document has been prepared by Change and Beyond Incorporated (more commonly known as Beyond PMSA) (or the Applicant); and,	Correct. The Applicant is Change and Beyond Incorporated. This was adequately explained in the Application and needs no further explanation here.

Item	PMSA Submission	Beyond PMSA Response
	iii. Is signed by Chris Humphrey as President Beyond PMSA.	
147	A company called BeyondPMSA Pty Ltd was incorporated on 6 November 2017 and Chris Humphrey appears to be the sole director and shareholder.	Correct. The purpose and function of this entity (which preceded the formation of Change and Beyond Incorporated due to the lag in the submission and processing of the application for incorporation under the AI Act) has been adequately explained and disclosed on the Beyond PMSA website.
148	There is a webpage and Facebook page ostensibly for BeyondPMSA.	Correct.
149	<p>The Beyond PMSA Website:</p> <p>a. suggests the entity is conducted by an association (that could be incorporated or might be unincorporated)—stating that they are: a group dedicated to providing support, information and a united voice for concerned Brisbane Boys College, Somerville House, Clayfield College, and Sunshine Coast Grammar School community members.</p> <p>b. lists more than seven people as “the Executive Team” and hence suggests that it is not BeyondPMSA Pty Ltd; but</p> <p>c. Directs that donations be banked to Chris Humphrey’s company BeyondPMSA Pty Ltd on the donate page⁸⁶</p>	<p>Change and Beyond Incorporated is an Incorporated Association. The description of the purpose of the incorporated association is of course explained on the website. This is uncontroversial.</p> <p>The details of the Executive Team are clearly listed. This is uncontroversial and transparent.</p> <p>The purpose and function of Beyond PMSA Pty Ltd is addressed in response to submission 147.</p>
150	<p>Beyond’s Facebook page suggests 4,500 followers. That is more than double the number of families with children at the four PMSA schools. Preliminary inquiries by PMSA suggest that at least 10% of the likes of certain postings are by non-existent ‘people’.</p> <p>The last 20 posts have received between 15 and 84 likes from a potential audience of 4,500. By comparison, PMSA’s Facebook page has 177 followers and on average 15 likes per post.</p>	<p>The first statement in this submission is a baseless assertion that is not supported by verifiable evidence.</p> <p>With regard to the second statement, it is submitted that the author of the Respondent’s Submissions is not a statistician and the number of “likes” bears very little correlation to the scope of engagement by followers of the page, particularly when you consider the level of fear and intimidation that many member of the community have rightly felt at being seen to be visibly involved in the ongoing debate, out of concern for their children. There is no “fear” of a public comment of support on the PMSA Facebook page. Beyond PMSA in comparison is a site that is challenging an established institution and very much takes on the role of a “whistleblower”.</p>

⁸⁶ Account Name: BeyondPMSA Pty Ltd BSB: 124-001 Account Number: 22659177 See: <https://www.beyondpmsa.com/donate>

Item	PMSA Submission	Beyond PMSA Response
151	A search of the incorporated association called Change and Beyond Incorporated showed that Change and Beyond Inc was registered as an association on 20 April 2018. Upon incorporation it had only seven members (Page 6 of 17 of the application). The membership is stated to include all persons who were on the day of incorporation members of the unincorporated association (clause 6 of the Constitution). That unincorporated Association was stated to have been formed on about 24 October 2017 (page 6 of 17 of the application).	If the Respondent has already conducted this search, then we question the purpose of submissions 144 to 149 at all. They serve no purpose other than to attempt to disingenuously paint the Applicant as some non-existent entity with questionable membership and status. The basis of our incorporation was clearly stated in the Application and our registered status as an incorporated association is a matter of public record.
152	PMSA has responded to the issues raised in good faith rather than the identity of the entities involved. If mediation is to be directed, though, it will be necessary for the Attorney-General to determine: a. the identity of the Applicant; and b. which entity is to pay the costs of the mediation; because it is not clear from the Application who the Applicant is as presently framed.	This is a nonsense submission. The registered status of Beyond PMSA (as Change and Beyond Inc) is a matter of public record. Our members and office holders are on the public record. Our members and office holders all have current and valid connections with PMSA Schools which satisfies the issue of standing and makes it very clear with whom any mediation ought to be conducted and who will be responsible for the costs of such mediation. The Respondent should re-read the first page of the Original Application and the same page in the Supplementary Application if it is still unclear on this matter.
PART I - CONCLUSION		
153	The facts and the law lead to the conclusion that the Attorney-General should follow the precedent of her predecessor, the Honourable Paul Lucas MP, in the similar case involving Saint Andrew’s Toowoomba Hospital, and dismiss the Application. As Mr Lucas stated, the granting of such as application is ‘without precedent’.	The Applicant rejects this submission. It has no merit for the reasons clearly stated in response to submission 66 and does not need to be re-stated here. The Saint Andrew’s Toowoomba Hospital decision provides no precedent for the present Application.
154	The assertions of Beyond, that recall of the Letters Patent is the only possible solution are not true. Further, the dysfunction alleged against the Churches is not made out. There is not a problem to be addressed and if there was, recall of the Letters Patent is not the solution.	There is very clearly a problem that needs to be urgently addressed. The Applicant: 1. Rejects the assertion that effective governance reform of the PMSA can ‘co-exist’ under a Letters Patent structure for the reasons outlined in the Application and in response to the earlier submissions of the Respondent which are re-stated in this document;

Item	PMSA Submission	Beyond PMSA Response
		<p>2. Maintains that the existence of a dysfunctional influence of the joint mission has been made out. A written statement by the Churches to the contrary provides no evidence which cancels-out the very obvious practical evidence outlined by the Applicant which demonstrates decision-paralysis within the PMSA on key issues and deference to the Churches on important matters of governance. The recent constitutional amendments which have been agreed to by the Churches and implemented by the PMSA demonstrate the existence of an influence which transcends the level of influence ordinarily held by members of an incorporated entity; and</p> <p>3. Maintains its assertion that a recall and cancellation of Letters Patent is the only solution that can facilitate effective governance reform which will repair the significant brand damage and destruction of organisational trust which the PMSA has inflicted upon itself and PMSA Schools.</p>
155	<p>Upon a proper consideration of the issues, there is not capacity at law for the exercise of the Minister’s discretion in the manner sought by the Applicant. If there was such power there is not justification for the exercise of the discretion. Examples of adverse consequences have been provided and many others can be imagined if the Minister was to recall the Letters Patent.</p>	<p>The Minister does have the capacity to exercise the discretion in the manner sought by the Applicant. The Applicant relies upon the content of its Application and its detailed response to the matters set out in Part B of the Respondent’s Submission.</p> <p>The small number of “practical” examples of adverse consequences which have been listed by the Respondent have been easily dismissed in our responses. There are in fact no plausible adverse consequences to the PMSA or PMSA Schools which have been put forward by the Respondent.</p>
156	<p>In the Submission, Beyond make many allegations. Little evidence is provided to support the allegations and upon examination of such facts as are provided or such other facts as PMSA has mentioned in the Submission, the evidence supports the continuation of the Letters Patent, contrary to the position advanced by Beyond.</p>	<p>This submission is rejected by the Applicant. The Applicant has provided material evidence. The Applicant has invited the Minister to seek clarification and further information on any matters of evidence which the Minister considers appropriate.</p> <p>With regard to evidence of financial failures, the Applicant maintains that, because of the continued unwillingness of the PMSA to disclose more detailed financial information in support of its claims, the Minister can not “pick a winner”, and an objective independent analysis of the PMSA’s raw enrolment and tuition fee data by the Auditor-General is the only way in which the Minister can objectively inform her decision on this Application.</p>

Item	PMSA Submission	Beyond PMSA Response
157	<p>PMSA has taken the issues raised by Beyond seriously and has taken steps to address legitimate concerns, including initiating and implementing recommendations from an external governance review; implementing constitutional reform and operating a strong, skilled and refreshed Board. This Submission has set out some of those steps. The Submission has pointed out that steps were underway before Beyond began its campaign and that they have been carried out in the context of an adversarial environment.</p>	<p>The Applicant submits that the Respondent had no intention of authentically engaging with the community to undertake meaningful reform. It has claimed that it had already undertaken significant work on governance reform before the disastrous events of 2017. If the PMSA, as an organisation, was genuinely informing itself about modern governance practices and was on the cusp of implementing them prior to 2017, then the events of 2017 should never have occurred.</p> <p>The Respondent has been undertaking (and continues to undertake) its current reform agenda “in the context of an adversarial environment” precisely because it has not engaged in an authentic process of community engagement.</p> <p>If the PMSA had genuinely taken the issues raised by the Applicant “seriously” then it would have undertaken proper community engagement. Our Application set out in detail the considerable lengths that we assert the PMSA went to to artificially “constrain” debate and discussion, segregate the community and restrict direct engagement to school representative bodies under its direct influence and control in early to mid 2018.</p> <p>The terms of reference for the consultants that were engaged were far too narrow and the work scope was decided without consultation with the community at all. What this represented was a “tick a box” approach to community engagement which gave the “illusion” of due process but which bore none of the hallmarks of authenticity. The flawed design and disingenuous implementation of this process ensured a predetermined outcome for the PMSA. From the outset it ensured what reform issues would be put on the table for discussion, and what reform issues would never see the light of day.</p> <p>More than anything else, it has been the belligerent rollout of this flawed process and the subsequent “double down” approach taken by the PMSA in its implementation that has obliterated community trust. It is one of the primary reasons why this Application was lodged in the first place. Quite simply, the process need not have been adversarial. It required concession, contrition and a commitment to improve on the part of the PMSA. Instead, what the community experienced was the exercise of ‘over-the-top’</p>

Item	PMSA Submission	Beyond PMSA Response
		control in the delivery of that “process” under the mistaken belief that only by doing so would it’s own “survival” be ensured. This approach has wasted considerable time, money and resources for no material lift in the stocks of PMSA Schools.
158	There has been brief discussion of the broader issues around Letters Patent generally but the point made has been that provided PMSA remains within the law in the carrying out of its charitable purposes, it is entitled to adopt the Letters Patent form of incorporation. Legislation to repeal the right to Letters Patent generally is an entirely separate matter and is a matter for the Parliament.	Whilst the Applicant considers Letters Patent an archaism an inappropriate model for modern governance, submissions relating to the general repeal of Letters Patent has never formed part of our Application. Our Application is focused solely on the specific issues pertinent to the PMSA. The Applicant rejects any assertion that the granting of this Application will have broader implications for other organisations operating under Letters Patent.
159	The Submission has also drawn to the attention of the Minister that Beyond has located the Application in a broader strategy of “force” designed to compel PMSA to do things that it is not otherwise required by law to do.	The issue of “force” which the Respondent seems so concerned with has been adequately addressed in response to submission 140.
160	Finally the Submission has suggested that in all the circumstances and given the history, mediation or other attempts at resolution, are unlikely to be successful. If mediation is ordered, the issue has been raised as to with whom PMSA must meet.	The point of this final submission is unclear. Clearly, a mediation would involve any representative that the Applicant chooses to put forward. That would most likely be with a member or members of the executive of the Applicant and their advisers.

Part 3: Response to Submissions of the Presbyterian and Uniting Churches

Item	Joint Church Submission	Beyond PMSA Response
	EXECUTIVE SUMMARY	
	<p>Both major propositions advanced by Beyond PMSA ('Beyond') in their submission are rejected by the Churches.</p> <p>The primary proposition of Beyond is that the current legal entity of the PMSA, namely Letters Patent governed by a Constitution, is suffering from organisational failure, and that the incorporation under Letters Patent is a primary contributing factor to the organisation failure. It is suggested the organisational failure is because the Letters Patent entity creates a unique dysfunctional joint mission with no single point of accountability.</p> <p>The second proposition is that the Minister (Office of Fair Trading) should request a "by arrangement" audit by the Auditor-General pursuant to s36 of the Auditor-General Act 2009 (QLD).</p> <p>The Churches deny the allegation that there has been an organisational failure and further submit that the evidence provided by Beyond demonstrates no failure based on the legal structure of the PMSA.</p> <p>The material provided, if accepted, is evidence of governance capacity.</p> <p>It is important to note that the churches are committed to the improvements in governance as proposed by the PMSA because of the AICD review and have supported the Constitutional amendments required to give effect to the AICD recommendations.</p> <p>As to the second proposition, the Churches' position is that they have received independent audited reports of the PMSA and annual reports</p>	<p>The joint submission of the Churches largely repeats the arguments, language and tone contained in the submissions advanced by the PMSA, via the PMSA's legal advisers. Many of the responses contained in Part 2 of this document will therefore apply to our responses in this Part 3.</p> <p>The Churches have extracted what they consider to be the two "major" propositions of our Application. At least one of them is. The other (relating to the request for a by-arrangement audit by the Auditor-General) is in fact not a proposition at all, but a necessary requirement to provide evidence to support the primary propositions which have only been partially addressed by the Churches in their Executive Summary.</p> <p>The Applicant notes the rejection by the Churches of the propositions advanced in the Application regarding (1) organisational failure; and (2) the incorporation under Letters Patent being a primary contributing factor to the organisational failure. However, the Churches claim that the Applicant has suggested that the organisational failure <i>"is because the Letters Patent Entity creates a uniquely dysfunctional joint mission with no single point of accountability."</i></p> <p>The Applicant asserts that dysfunction is the cause of organisational failure within the PMSA but it does not agree with the interpretation by the Churches of "how" that dysfunction has been created. Their analysis of our argument is misconstrued. It is incorrect to state that the Letters Patent entity "creates" a unique dysfunctional joint mission. That is not the Applicant's submission at all. Our submission in relation to dysfunction is best summarised as follows:</p> <ol style="list-style-type: none"> 1. A joint mission by its nature can never offer a single point of

Item	Joint Church Submission	Beyond PMSA Response
	<p>dealing with the issues of enrolment and tuition fee revenue. The independently audited reports were prepared from the raw data and as such there is no reason not to accept the veracity of the information contained in these audited reports. As such there is no need for a “by arrangement” audit by the Auditor- General.</p>	<p>accountability. It is impossible.</p> <ol style="list-style-type: none"> 2. The combination of a Letters Patent structure when overlaid with a hierarchy that can not offer a single point of accountability creates an unacceptable risk framework for PMSA Schools. 3. That structure is unique in the context of Letters Patent organisations. 4. In the case of the PMSA, we assert that this structure is also complicated by a dysfunctional relationship between the Churches that will never be publicly acknowledged. We maintain our assertion that, despite the public pronouncements of “unity” (particularly in their unified opposition to this Application) the Presbyterian and Uniting Churches do have fundamental differences. Different views and beliefs are not uncommon or unique in corporate contexts, but the joint mission which is formed through the PMSA is different because we submit that those fundamental differences <u>do</u> have an influence on the operation of the PMSA Board and its decisions because it is constituted almost exclusively with members appointed by both congregations. <p>It is appropriate that we further extrapolate on the concept described in 4 above. All Boards operate within a paradigm where they must manage competing views and beliefs. That is uncontroversial. However, the PMSA is captive to the competing ideological and theological views of the Uniting and Presbyterian Churches. This is not a criticism. It should align with the religious values of those Churches in the delivery of its charitable purpose.. However, despite the assertions by the Churches to the contrary in their submission that they do not act as “shadow directors” they nevertheless hold a very real and powerful level of influence over the members of the PMSA Board who are appointed from members of the Presbyterian and Uniting denominations.⁸⁷ We submit that this influence exists over matters which fall outside the delivery of the Christian</p>

⁸⁷ With the exception of independent Board members, who must nevertheless be members of the Presbyterian or Uniting Church or another denomination “who has agreed in writing to uphold the education policies of both the Presbyterian and Uniting Churches” - see sections 5.4 and 5.5 of the *Constitution of the Presbyterian and Methodist Schools Association* issued at 10 December 2018.

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		<p>mission and clearly involves deference on important issues of governance, including Letters Patent⁸⁸, (despite the fact that the Letters Patent does not reside with the Churches at all, but with the appointed PMSA Board members from time to time). There is very clearly a “factional” component to the functioning of the PMSA Board which affects its decision making processes. With respect, a written statement by the Churches which points to agreement on their opposition to this Application does not of itself provide evidence of unity and proper functioning of the PMSA or the joint mission at all.</p> <p>We submit that this influence adversely impacts on the ability of the PMSA to effectively respond to both operational matters and to broad and dynamic market challenges, including the self-inflicted challenges created by the PMSA’s own actions in 2017. It contributes to a poor decision-making culture. The flawed, drawn-out organisational response over the last 18 months has not only proved the existence of dysfunction, but its continuation. If the Auditor General is permitted to undertake a by-arrangement audit of the PMSA and PMSA Schools, then we submit that the results of that audit will demonstrate the practical manifestation of that dysfunction over the last 2 years on the financial “recovery” trajectory for PMSA Schools.</p> <p>We therefore submit that the PMSA does in fact take guidance from and defers to the Churches on a great many matters of importance, particularly in relation to the subject matter of this Application and the recent governance reform process that the PMSA has embarked upon.</p> <p>We have no doubt that the Churches may prefer to regard this type of engagement more benignly as a relationship akin to that of a “mentor” (or similar), but it is a very short journey to the concept of being a “shadow director”. We are loathe to assert that out of respect for the Churches, but the effect is, in many respects, one and the same.</p>

⁸⁸ The Uniting and Presbyterian Churches have chosen to provide a joint “unified” statement of position in response to our Application which ultimately supports the Respondent’s position on its ability to function and denies that “*differing cultural, organisational and theological perspectives cannot adequately or appropriately govern together*”

⁸⁸ (See page 1 of the ‘*Joint Submission of the Presbyterian Church of Queensland and the Uniting Church of Queensland, Queensland Synod*’ dated 28 March 2019). There are no deadlock breaking mechanisms in the current governance structure, and as a consequence, unless there is unanimous agreement at both PMSA Board level and between the Churches, PMSA Schools remain “captive” to the dysfunction.

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		<p>Section 9 of the <i>Corporations Act 2001 (Cth)</i> includes in the definition of a director “...a person who is not validly appointed as a director if... the directors of the company or body are accustomed to act in accordance with the person’s instructions or wishes”. Whilst the PMSA is not subject to regulation under the Corporations Act, the definition is appropriate guidance for understanding the concept in practice.</p> <p>Additionally, the <i>Australian Charities and Not for Profits Act 2001 (Cth)</i> (“ACNC Act”) defines a director of a company⁸⁹ as: “(a) If a company is incorporated – a director of the company, or an individual who performs the duties of a director of the company; or (b) If the company is not incorporated – a member of management of the company, or an individual who performs the duties of such a member; regardless of the name that is given to his or her position, or whether or not he or she is validly appointed.”</p> <p>We submit that the reality of influence is very very different from the position espoused by the Churches. Either the Churches and members of the PMSA Board are both confused about those roles and required legal separations, or they are disregarding them. The Applicant prefers the former interpretation.</p> <p>The power of appointment and removal to the PMSA Board, the embedded controls and approvals required at the Church level within the PMSA’s own Constitution and the deference to Church views on matters of importance creates the above dynamic. The recent amendment to the PMSA’s own constitution to embed “visitation” rights for the Churches to the PMSA at any time and other amendments to provide for greater reporting obligations to the Churches, ironically completes the pathway and in the circumstances provides little additional comfort to the community for this reason.⁹⁰</p> <p>With regard to the Churches views on the need for a by-arrangement audit by the</p>

⁸⁹ (Under the ACNC Act, a company is defined in the Act as a body corporate or any unincorporated association).

⁹⁰ It is acknowledged that visitation rights are sometimes used in Church organisations, but it is the “purpose” for which those rights should be applied that is ultimately important.

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		<p>Auditor-General, the Applicant submits that the Churches would not have received data that shows a correlation between enrolment and tuition fee data at all if they have only received the audited accounts from the PMSA. The basis upon which the audited accounts are prepared by the PMSA simply does not disclose that level of detail or analysis. Regardless, the point made by the Churches is irrelevant to the purpose of our request because the financial information that the PMSA relies upon in support of its submissions in response to our Application relates to periods which largely precede the serious events of 2017 and the organisational response in 2018. Audited accounts for the periods of concern do not exist yet. The relevant data, however, DOES exist. Previous figures do NOT exonerate the Respondent or its reform decisions. It is the period of financial reporting from 2017, 2018 and 2019 financial years that will be most relevant to the claims set out in our Application, but a reasonable period preceding 2017 is required for “baseline” purposes. Given the concerns raised in this Application, there is an urgency for this raw data to be independently reviewed, and acted upon where the results demonstrate a decline in the financial trajectory of the schools.</p> <p>Furthermore, it is not unusual for regulators to only become involved in a more extensive investigation into the operations of entities within their area of regulation upon the lodgement of complaints. The Auditor General has recently undertaken a review of 76 Independent Schools in Queensland which discovered significant anomalies in reporting across a number of schools, with evidence of insufficient controls for data which have corresponding implications for accuracy of reporting for the purposes of financial grants. No organisation is bullet-proof.</p>

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DETAILED SUBMISSIONS		
1	Single Legal Entity	
	<p>The Letters Patent creates a single legal entity. The Constitution of that entity captures the governance framework for the legal entity.</p> <p>The PMSA Council/Board has all the duties of a governing Board to deliver against the objectives of the PMSA, including fiduciary duties.</p> <p>The Churches’ role in appointing members to the Board does not derogate from the single purpose and mission of the PMSA.</p> <p>The Churches are not and do not act as shadow directors of the PMSA.</p>	<p>The Applicant agrees with this characterisation of the PMSA’s legal structure.</p> <p>The Applicant agrees with this broad characterisation of the duties of the PMSA Board. It owes no fiduciary duties to stakeholders other than the Churches. Any rights that exist within community stakeholders are either contractual under enrolment agreements or otherwise required to be enforced under the Trusts Act, as discussed in our responses to the submissions of the PMSA in Part 2.</p> <p>The Applicant agrees that this should be the intent and effect of the appointment process and the Churches role.</p> <p>The Applicant does not assert this. We have no doubt that the Churches may prefer to regard the nature of their role as beneficiaries and their influence more benignly as a relationship akin to that of a “mentor” (or similar), but it is a very short journey to the concept of being a “shadow director”. We assert that the reality of influence is very very different from the position espoused by the Churches and we rely upon our submission in the preceding section.</p>
2	Addressing the Various Assertions of Dysfunction	
	A. The Churches ability to agree	
	<p>The assumption that those from differing cultural, organisational and theological perspectives cannot adequately or appropriately govern together fails to understand the nature of governance of a charitable institution. Each person appointed to the PMSA Board owes a fiduciary duty to act to the institution in carrying out its charitable purpose. While governance capacity may be influenced by a person’s background and beliefs, this does not imply governance failure.</p>	<p>The Applicant has a very good grasp of the “nature” of governance of charitable institutions. The Applicant is also very well versed in the concept of fiduciary duties and the duties owed by the PMSA Board members to the PMSA as an institution in carrying out the charitable purpose of the PMSA. The PMSA Board members also owe fiduciary duties to the Churches.</p> <p>The Applicant has never asserted that the governance capacity of individual</p>

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	<p>It should also be noted that this assumption is relevant only to the governance framework as determined by the Constitution. The Letters Patent as the form of legal entity has no bearing on this issue.</p>	<p>PMSA Board members is “<i>influenced by a [Board members] background and beliefs</i>”, nor has it ever asserted that such backgrounds and beliefs “<i>imply governance failure</i>”. The submission by the Churches on this point is misconceived and does not reflect the content of our Application.</p> <p>The final point made by the Churches in this submission with respect to the governance framework as determined by the Constitution is confusingly put, but ultimately incorrect. Regardless, it is not necessary to address this issue as the underlying assumption that it refers to, and which is attributed to our Application, is also incorrect. This has already been addressed above.</p>
	<p>B. The Churches ability to work together</p>	
	<p>The Presbyterian and Uniting Churches regularly work together. In relation to the PMSA the churches have in the recent past worked together with the PMSA to:</p> <ul style="list-style-type: none"> • Appoint and remove nominees to the Board; • Achieve Constitutional reform and more recently amended the constitution in response to the AICD governance recommendations; • Monitored and heard reports from the PMSA about the health and trajectory of the entity; • At the request of the PMSA overseen and appointed a mediator to assist in the resolution of community concerns arising from a critical event; 	<p>The Applicant submits that the majority of activities listed in the Churches submission (extracted in the preceding column) do not actually require the “cooperation” of the Churches in order to occur.</p> <p>An ability to work together can only be objectively and authentically demonstrated by:</p> <ol style="list-style-type: none"> 1. actions that require “joint” decisions; and 2. those decisions being jointly made. <p>It is submitted that only decisions on Constitutional amendments require a demonstrated joint decision. All of the other activities described by the Churches can exist and occur without agreement. They do not demonstrate unity or a consistent culture of alignment between their Churches on issues relating to the PMSA.</p> <p>Dealing with each point in turn, we submit the following:</p> <ul style="list-style-type: none"> • Board nominees: With regard to the appointment and removal of nominees to the PMSA Board, those appointments are divided along

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		<p>Church lines. Those appointments do not require the agreement of both Churches. “Independent” Board appointments are made by the PMSA Board itself and should not (in theory) require agreement of either Church.</p> <ul style="list-style-type: none"> <p>Constitutional reforms: As stated above, we agree that such amendments do require the agreement of both Churches. The Applicant maintains its previous submissions that the individual Constitutional reforms which have been implemented are unremarkable, and any seemingly more material amendments benefit only the Churches (ie., visitation rights and additional reporting). Ultimately most of the amendments neither address the underlying problems outlined in our Application, nor do they benefit the community towards which the charitable purpose is directed. Our reasoning is set out in adequate detail in our Application, but we also make the point that the glacial pace of constitutional reform (which both the PMSA and the Churches admit has been underway since around 2014) demonstrates serious challenges in achieving consensus decisions. To be diplomatic, the existence of a convoluted and “duplicated” joint decision process has served to take the issues of Constitutional reform “off the agenda” and placed in the “too hard basket” until serious community concerns arose in late 2017. At that point it seems that a joint decision on the largely uncontroversial and simple constitutional amendments could only be secured through the involvement of a third party (the AICD).</p> <p>Reporting from the PMSA: This function requires no agreement between the Churches at all. It does not even require interaction between them. The singular act of receiving a “report” does not objectively demonstrate unity or an ability to work together.</p> <p>Appointment of a mediator in 2017: The act of appointment of the Hon Mr Chesterman QC appeared to be “joint”, but the Applicant submits that the spirit of the appointment was not “jointly” celebrated as necessary (except as a process response to reduce intense community</p>

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		<p>backlash against the PMSA’s actions in 2017). The Applicant also questions where the “request” for appointment truly came from. (Perhaps a letter of request or similar exists, but we submit that it did not authentically come from the PMSA itself). Regardless, the appointment did not result in any material outcome or recommendations which required a joint decision by the Churches. The Churches merely made a public pronouncement of “support” for the conduct of a “process”. That is all that occurred. Absent published findings and recommendations with which the Churches would be required to decide upon, the act of appointment of Mr Chesterman does very little to objectively demonstrate unity or an ability to work together.</p>
	<p><i>C. The Churches are united and have demonstrated this in their previous behaviour</i></p>	
	<p>The churches have continually worked together to provide excellent educational opportunities for students over the history of the PMSA.</p> <p>In more recent years the churches have been actively working through Constitutional reform. The evidence provided by Beyond demonstrates that the churches have taken an active interest in governance and Constitutional reform. This could only be done in agreement between the Churches and the PMSA.</p> <p>At no time have the Churches published contrary views on the issue of Letters Patent. Both Churches regularly deal with this form of legal entity and are familiar with the operations of bodies formed in this manner.</p>	<p>The Applicant relies on its responses to the preceding submission in respect of the submissions made by the Churches here with regard to their demonstrated ability to work together, and their role in delivering constitutional reforms.</p> <p>The Applicant has never submitted that either Church has “published” contradictory views on the issues of Letters Patent. Clearly if they had, then it would make the Minister’s decision easier. However, it is incorrect to assert that the evidentiary burden of establishing that there exists a divergence of views on the appropriateness of the PMSA remaining constituted under Letters Patent (or indeed on any matter relating to governance and failings of the PMSA which is addressed in our Application) can only be established by “published” opinion. That is not the way in which Churches operate, nor do we expect them to.</p> <p>Evidence of divergent views of the Churches is apparent from the drawn-out nature of a two year reform process that, it seems to all reasonable external observers, was necessary to navigate both the politics of the Churches and the fears of individual PMSA Board members (who hold their positions on the Board with a corresponding individual ownership “liability” which is ensured by Letters</p>

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		<p>Patent). The Churches may attribute these timeframes as a function of Church “bureaucracy” and internal governance processes. The Applicant does not. It is both a political and a structural dysfunction that continues to embed risk and disadvantage PMSA Schools.</p> <p>With regard to the final point made by the Churches in this submission, “familiarity” with the operations of bodies that exist under Letters Patent does not establish a defence to the existence of the dysfunctional influences and processes described above, particularly in the unique joint mission structure of the PMSA.</p>
3	<p>Addressing the evidence of operational dysfunction presented by Beyond</p>	
	<p>A. Financial ‘ enrolment crisis of the schools</p>	
	<p>The Churches receive the independent audited reports of the PMSA and the annual report illustrating enrolment information. We have not been provided with any evidence that would illustrate the schools are experiencing a unique financial or enrolment crisis. While it has been acknowledged that there has been a trend in relation to one of the schools the form and nature of the PMSA creates a broad resilience for all the school communities.</p> <p>This is the intention of the nature and function of having the schools operating under one legal entity/governance body and illustrates the resilience of the model. The Churches are unlikely to move from this model, whatever the legal structure.</p>	<p>As stated above, the Applicant submits that the Churches would not have received data from the PMSA that shows a correlation between enrolment and tuition fee data at all, if they have merely received the audited accounts. The basis upon which the audited accounts are prepared by the PMSA simply does not disclose that level of detail or analysis. The financial information that the PMSA relies upon in support of its submissions in response to our Application, and to which the Churches refer in this submission, relates to periods which largely precede the serious events of 2017 and the organisational response in 2018. Audited accounts for the periods of concern do not exist yet. It is the period of financial reporting from 2017, 2018 and 2019 financial years that will be most relevant to the claims set out in our Application. Given the concerns raised in this Application, there is an urgency for this raw data to be independently reviewed, and acted upon where the results demonstrate a decline in the financial trajectory of the schools.</p> <p>The Churches reference to a “trend” at one of the schools is clearly a reference to the continuing issues at Clayfield College, which has sadly suffered under the stewardship of the PMSA for many years (whilst other schools nearby have flourished). However the statement that the “form and nature” of the PMSA</p>

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		<p><i>“creates a broad resilience for all the school communities”</i> is very concerning and goes to the heart of the Applicant’s concerns regarding the financial trajectory of PMSA Schools. Firstly, the statement implies that the resilience is derived from the financial health of other schools in the PMSA Schools “Group”. (This has been a continuing point of concern amongst a community which has never had sufficient answers from the PMSA on questions associated with the commingling and application of funds, and the increasing debt position of the schools, as disclosed in the 2017 accounts). Secondly it suggests that a broader adverse financial event affecting more than one school could have a detrimental affect on the whole.</p> <p>The Churches final statement about its preference for “one legal entity / governance body” is not something which our Application challenges. Neither our Application nor the separate Proposal set out in Appendix 3 to our Supplementary Application advocate for a separated ownership model or more than one governing body. That submission is therefore noted, but ultimately adds nothing to the Churches submission for that reason.</p>
	<p><i>B. Loss of public trust/public face/ failure to be seen as dealing honestly/impactful decision required</i></p>	
	<p>The Churches have consistently engaged in a governance process where the limits of their powers have been recognised and appropriately managed. The Churches have not acted as shadow Directors but rather have contributed jointly to the operations when requested by the PMSA. This will not change whatever the legal structure.</p> <p>Under the amended Constitutional framework, the Churches are confident that public trust will be enhanced as evidence of the improved governance of the schools is demonstrated.</p>	<p>The true nature of “request” process has never been explained to the community. The Applicant relies on its earlier submissions in this Part 3 on the “shadow director: issue.</p> <p>The Applicant and the overwhelming majority of the PMSA Schools community that it represents do not share the Churches confidence that the amended Constitutional framework will deliver the level of governance improvement that is required. The PMSA’s ability to rebuild trust will remain severely handicapped as a result. The Applicant has explained in significant detail in Part 2 if this document, and in its Application why the current Constitutional amendments are deficient and why Constitutional amendments alone will never resolve the governance and commercial problems facing the PMSA and PMSA Schools</p>

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		without a change to the basis for its incorporation.
	C. Lack of transparency	
	<p>The commitment by the PMSA to the implementation of the AICD’s recommendation regarding current best practice in governance is commended. The Churches have been fully briefed on the outcome of the AICD’s Governance Review and fully support the PMSA’s approach to implementation of the AICD’s recommendations. This will not change whatever the legal structure.</p>	<p>The Applicant disagrees in the strongest terms possible with any assertion that the PMSA’s governance reform agenda has been appropriately and authentically delivered. The Applicant has explained in great detail in its Application why the majority of the PMSA Schools community considers that the PMSA’s process of community “engagement” and the AICD assisted review process was both constrained in its scope and fundamentally flawed in its outcomes.</p> <p>This is an extremely disappointing and disheartening submission from the perspective of the Applicant and the community. The community will never be briefed on these issues to the extent that the Churches appear to have been. The community has simply been advised of the outcome. True transparency continues elude the community. Trust will continue to elude the PMSA as a result.</p>
	D. Safety of children	
	<p>The Churches and the PMSA have developed and maintained best practice in relation to responding to the Royal Commission recommendations. The Churches have worked together collaboratively, openly and transparently in responding to claims of historical sexual abuse. This will not change whatever the legal structure.</p>	<p>The Applicant has never criticised the “intent” of the PMSA or the Churches in dealing with child safety issues. We have questioned the practical implementation of policies and procedures and the achievement of “best practice” as a result. All parties must work together on the important issue. We maintain our view that progress on achieving this, and in building enhanced trust around best practice responses would be materially enhanced by a change to the basis of the PMSA’s incorporation.</p>
	E. Delegations model is flawed	
	<p>Any governance structure will require a delegation of authority. The governance structure proposed by Beyond requires delegation. This is not related to the legal structure, it is a key component of any governance model proposed.</p>	<p>The Applicant accepts that group corporate structures often have processes and functions that are implemented via delegations. However, that does not change our submission on this point.</p> <p>The PMSA’s current structure is entirely based on delegations. Our fundamental</p>

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		<p>argument is that this will never result in a proper devolution if operational control to PMSA Schools, (which is, ironically, one of the PMSA’s recently stated objectives). It can simply never occur to the level required to ensure that competent operational decisions by qualified educators and administrators are not overridden by inexperienced and under qualified Board members. In that paradigm, precisely the same circumstances for risk exist as were present in 2017. Nothing has changed. Furthermore, a delegations structure of the scale which is entrenched within the PMSA Group will actively prevent authentic collaboration and challenge innovation. We have set out extensive reasons for this in our Original Application and in our Supplementary Application and they are not re-stated here. The Churches have not addressed any of these points in their submission.</p>
4	<p>Addressing the solution proposed by Beyond</p>	
	<p>The model proposed by Beyond requires the consent of the two Churches and the PMSA.</p> <p>It is unclear how the proposition that the Letters Patent be revoked and the group be formed under the AIA is related to the model. The argument put forward is that the Minister’s discretion under 106H would “facilitate this transition”. On the contrary, the current governance arrangement is sufficient to allow for these decisions to be made with the consent of the three parties. There is no advantage to the Churches, the PMSA or the schools to manage this transition as a result of the Minister’s discretion. Any such decision would require significant time and consultation across the Church and School’s communities to ensure the best interest of all parties is observed.</p>	<p>We assume that this submission is referring to the separate Proposal attached in Appendix 3 to our Supplementary Application, although this is unclear? If that assumption is correct, then the Churches are correct in their statement that implementation of our Proposal would require the consent of the two Churches and the PMSA. We have never asserted otherwise. Our Proposal was attached to the Supplementary Application for convenience, and at the specific request of the Office of Fair Trading. The Churches may have misconstrued the purpose and intent of that separate Proposal in the same way that the PMSA appears to have misconstrued it. (The purpose of the Proposal and its context was set out in detail in the prefatory section contained within it).</p> <p>If the Churches and the PMSA were minded to implement a structure similar to that set out in the Proposal, it would be welcomed by the community. It is expected that the decision would require time and analysis, but the most important issue for the community is an acknowledgment that the option is not simply ruled out without objectively investigating all of the organisational benefits of change. The community would be satisfied with a commitment to review and consider it and to make a decision on transition within a reasonable</p>

Item	Joint Church Submission	Beyond PMSA Response
		<p>timeframe.</p> <p>If a decision was made to transition, then implementation could occur carefully over a period of time. The Applicant submits that, despite the PMSA’s submissions, and their current advice, the material risks of transitioning are virtually non-existent and the level of difficulty to achieve it across the PMSA Group is comparatively low. We have assessed all of the issues and steps and these have been considered by legal, financial and organisational design professionals who regularly implement both large and medium-scale corporate restructures. It is very achievable and the costs associated with implementation would not be exorbitant or prohibitive.</p>
FINAL COMMENTS		
	<p>The Churches are opposed to the application bought by Beyond. Their application is primarily a critique of the governance of the schools, founded on the assertion that the Letters Patent creates a unique legal disadvantage because of the dysfunction of the Churches.</p> <p>It is unclear how their proposed model:</p> <ul style="list-style-type: none"> • Improves or enhances the fiduciary duties of the current councillors • Improves or enhances governance capacity • Is possible without the consent of the Churches and the PMSA • Addresses the claimed dysfunction of the Churches. <p>It is submitted that the evidence provided by Beyond demonstrates no failure based on the legal structure of the PMSA. The material provided, if accepted is, is evidence of governance capacity. The Churches are committed to the improvements in governance as proposed by the AICD and are supportive of the PMSA’s Constitutional amendment to give effect to those recommendations.</p>	<p>This submission largely re-states the position of the PMSA in their submission, both in language, structure of arguments and tone. We have already addressed each of these points in Part 2 and do not restate them here. The Applicant submits that the evidence and reasoning provided by it in the Original Application, the Supplementary Application and in this Submission in Response does demonstrate a failure which is attributable to the legal structure of the PMSA. The submissions of the Applicant do not in any way demonstrate governance capacity in the PMSA to the standard that should be demanded in independent schools with the history, culture and “price tag” of PMSA Schools.</p> <p>The Applicant re-states its strong opposition to the current reform process being undertaken by the PMSA, and expresses its equally strong concerns at the level of confidence and trust that the Churches have elected to invest in the PMSA despite the very strong issues of “trust” that the community have expressed in this Application. With respect, a decision to reward the PMSA with “more” trust in those circumstances confounds the entire PMSA Schools community. Our position remains that organisational trust has been severely damaged in the PMSA. It can only be authentically restored under an appropriate incorporation model that “embeds” trusts in its architecture. It can not be done by</p>

Item	Joint Church Submission	Beyond PMSA Response
		<p>Constitutional reform alone. It cannot be achieved without overwhelming support and endorsement from the community.</p> <p>With respect, the continued unilateral support by the Churches of the PMSA’s reform agenda demonstrates a concerning lack of understanding for the processes through which authentic and lasting organisational trust must be rebuilt in 21st century Australia. The Applicant delivered a substantial presentation on organisational trust which was contributed to by corporate experts and leading academics (in precisely that field of endeavour) from the University of Queensland at a Town Hall meeting in late 2018. The content of that presentation was, in the opinion of the Applicant, entirely objective. It was live-streamed and is readily accessible to view in un-edited format on the Applicant’s Facebook Page.</p> <p>To quote the content of a previously published opinion paper on the Applicant’s website entitled “How to Restore the PMSA to the Circle of Trust in Six Easy Steps” which was published on 7 December 2018 : <i>“If delivering successful governance reform is possible by unilaterally re- defining the limits of trust around yourself and everyone else, then it would be a truly amazing feat of artistic and ethical dexterity. As a work of art, it isn’t a “circle” – it is more like a poorly formed “trapezoid” – and transparently so. However, as an exercise in stakeholder engagement and management, it has been the PERFECT demonstration of the power of Letters Patent to completely ERASE accountability from the picture! Unfortunately, the flaw in this logic is that the party that “breaches” the circle of trust can’t regain its position by ignoring the circle, taking out the crayons to draw a separate obtuse outline and then inviting everyone else to step into their odd-shaped world. No one is that gifted artistically – not even the PMSA. You have to RESTORE the circle using thoughtful and gentle brushstrokes and then be invited back in. Its called authentic engagement. There is no other way to do it. That NEVER happened earlier this year – what a lost opportunity for the PMSA that has needlessly protracted the debate and its impact on our schools.”</i>⁹¹</p>

⁹¹ See: https://docs.wixstatic.com/ugd/437c0d_1149f56d53ae42e3ba51bd53eb6c8a64.pdf