Australian Education Amendment Bill 2017

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Portfolio: Education and Training
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Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.
When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.
All hyperlinks in this Bills Digest are correct as at June 2017.
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Purpose of the Bill

The purpose of the Australian Education Amendment Bill 2017 (the Bill) is to amend the Australian Education Act 2013 (the Act) to implement the Government’s new school funding arrangements as announced on 2 May 2017 and as provided for in the 2017–18 Budget.¹

The Bill also proposes to amend the Act and the Australian Education (Consequential and Transitional Provisions) Act 2013 to make policy changes and technical amendments to the Act.

Structure of the Bill

The Bill contains one schedule divided into three parts:

- Part 1 provides for the proposed new school funding arrangements
- Part 2 makes policy changes, including updating the Preamble and Objects of the Act, stipulating conditions of financial assistance and setting out state and territory government funding requirements and
- Part 3 makes miscellaneous technical amendments, including some definition changes and amendments to the current requirement for the Minister to consult with state and territory governments about changes to the Regulations.

An explanation of the operation of each part is outlined at pages 1 to 4 of the Explanatory Memorandum to the Bill.²

Background

In 2013, the Abbott Government committed only to the current school funding arrangements and their associated quantum of funding for the then forward estimates period, 2014 to 2017.³ The 2014–15 Budget signalled that Australian Government school funding arrangements would change from 2018 by announcing a new rate of indexation linked to the Consumer Price Index, which was projected at 2.5 per cent and thus lower than the indexation rates prescribed by the Act.⁴ The Turnbull Government subsequently increased the proposed rate of indexation by announcing a uniform indexation rate of 3.56 per cent in the 2016–17 Budget.⁵ In neither case was there any announcement about how Australian Government recurrent funding for schools would be allocated from 2018 nor was there any attempt to implement the proposed indexation rates by introducing amendments to the Act.

A new school funding plan

On 2 May 2017 the Government announced its proposed plan for school funding from 2018.⁶ The Government has explained that its proposed funding model will deliver the ‘real “Gonski” needs-based funding model’, by ending the 27 different funding arrangements that currently exist, thereby correcting the ‘inequities and inconsistencies in the current schools funding model’ and providing ‘fair, needs-based and transparent funding’.²

Key elements of the current funding system will remain, but they will be affected by the Bill’s proposed changes (as explained elsewhere in this Bills Digest). They include:

- the Schooling Resource Standard (SRS), which comprises a base per student amount (with different amounts for primary and secondary school students) and loadings to address student and school disadvantage.

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3. T Abbott (Prime Minister) and C Pyne (Minister for Education), Joint press conference with the Hon. Christopher Pyne MP, Minister for Education, Parliament House, Canberra, transcript, 2 December 2013.
6. M Turnbull (Prime Minister) and S Birmingham (Minister for Education and Training), True needs-based funding for Australia’s schools, media release, 2 May 2017.
7. Ibid. For a list of the 27 funding models, see: Senate Education and Employment Legislation Committee, Answers to Questions on Notice, Education Portfolio, Supplementary Budget Estimates 2016–17, Question 100854.
• socioeconomic status (SES) scores for non-government schools, which are a measure of a school’s community capacity to support its schools (and therefore their ‘need’ for Australian Government funding) and are calculated by linking student residential addresses to Australian Bureau of Statistics Census data and

• ‘capacity to contribute’ percentages, which are linked to a non-government school’s SES score, and which discount the Government’s per student SRS funding amount for a school by that percentage—there are different percentages for primary and secondary non-government schools at the same SES score level.8

Key features of the new funding system
The main changes to school funding proposed by the Government include:9

• the Australian Government will fund government schools at 20 per cent of their Schooling Resource Standard (SRS) amount (comprising a base per student amount and loadings for students and schools that need extra support). Non-government schools will be funded at 80 per cent of their SRS amount. Currently, government schools are funded on average at 17.0 per cent of their SRS and non-government schools at 76.8 per cent. These proportions reflect the Australian Government’s funding role—it is the majority public funder of non-government schools and, conversely, state and territory governments are the main providers of public funds for government schools

• all schools will transition to the new Commonwealth share of their SRS by 2027 by means of annual adjustments over a ten-year period

• transition assistance, amounting to $39.8 million over ten years, will be provided for ‘disadvantaged and vulnerable’ schools adversely affected by the move to the new system

• the base per student amount will be indexed annually by 3.56 per cent from 2018 to 2020. Thereafter a floating indexation rate, which will be a composite of the Wage Price Index (75 per cent) and the All Groups Consumer Price Index number (25 per cent), or a minimum indexation rate of three per cent if the floating indexation rate is lower, will apply

• the Minister’s power to determine a single socioeconomic status (SES) score for a group of schools, known as ‘system weighted’ SES scores for groups of non-government schools, will be removed and all non-government schools will be funded according to their individual SES scores. Under the current arrangements, for example, Catholic schools in each state and territory Catholic education system, except the Australian Capital Territory (ACT), are funded according to the average SES score of all schools in their system. The SES score for ACT Catholic systemic schools is the average SES score for all Catholic systemic schools across Australia

• the capacity to contribute percentages for non-government primary schools will be changed because of an anomaly which has resulted in the base per primary student amount for non-government schools within the 108 to 122 SES score bands exceeding that for secondary students at the same SES score level (note, the cost of delivering education is higher in secondary schools)10

• the loading for students with disability (SWD) will be transitioned to a new model based on a nationally consistent SWD definition and scaled rates according to the level of classroom adjustment needed, in accordance with the Nationally Consistent Collection of Data on School Students with Disability. Currently, a flat rate of 186 per cent of the base per student amount for SWD attending mainstream schools and 223 per cent for SWD attending special schools apply, and eligibility is based upon varying state and territory definitions of disability

• Northern Territory government schools will receive additional assistance of $35.6 million to improve student outcomes.

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Notably, the Government has dispensed with the ‘no school will lose funding’ principle that has been a feature of Australian Government recurrent funding for non-government schools since the introduction of the Howard Government’s socioeconomic status (SES) system in 2001.\(^{11}\)

**Other changes**

Other proposed amendments to the Act include:

- simplifying and updating the Preamble and Objects of the Act to ‘better align with long term national goals for schooling, and the principles of needs-based and sustainable funding linked to nationally agreed evidenced-based reforms’\(^{12}\)
- amending the conditions of financial assistance for the states and territories, including the requirement for them to maintain their 2017 levels of funding for government and non-government schools and
- reducing the ‘command and control’ features of the Act, including removing the requirements for approved authorities for more than one school to have an implementation plan, and for all approved authorities to have school improvement frameworks and school improvement plans for their schools.

More detail and background about the proposed changes to school funding is provided in the Explanatory Memorandum for the Bill and the Department of Education and Training’s submission to the Senate Education and Employment Legislation Committee inquiry into the Bill.\(^{13}\) The focus of this Bills Digest is on some of the main changes to the recurrent school funding arrangements.

**Committee consideration**

**Senate Education and Employment Legislation Committee**

The Bill was referred to the Senate Education and Employment Legislation Committee (the Committee) for inquiry and the report was tabled on 14 June 2017. Details of the inquiry, including the Committee’s report, are at the Committee’s [webpage](#).

The Committee’s majority report recommended that the Senate pass the Bill without amendment.\(^{14}\) Labor senators and the Australian Greens presented dissenting reports. Labor recommended that the Bill not be supported in its current form.\(^{15}\) The Australian Greens also reported that it could not support the Bill in its current form and made a number of recommendations.\(^{16}\) These are discussed below in the ‘Policy position of non-government parties/independents’ section of the Bills Digest.

**Senate Standing Committee for the Scrutiny of Bills**

The Senate Standing Committee for the Scrutiny of Bills reported on the Bill in its [Scrutiny Digest](#) of 14 June 2017.\(^{17}\) The Committee raised concerns with a number of provisions in the Bill including:

- a broad delegation of power in proposed section 35A of the Act (at item 16 of Schedule 1 to the Bill), which would allow amendment by regulation of the Commonwealth share of funding for government and non-government schools
- proposed section 69B (at item 40), which provides for transition adjustment funding to be determined by the Minister and for this determination to not be subject to parliamentary disallowance. The Committee considered this to involve the delegation of significant matters from the Parliament to the Executive
- proposed sections 22 and 22A (at items 59 and 60), which seek to impose new policy and funding requirements on states and territories, as conditions of financial assistance provided to them. The Committee

\(^{11}\) M Harrington, *Australian Government funding for schools explained: 2013 update*, Background note, Parliamentary Library, Canberra, 8 March 2013, pp. 9 and 35.

\(^{12}\) Explanatory Memorandum, op. cit., p. 25.


\(^{15}\) Ibid., p. 56.

\(^{16}\) Ibid., pp. 60–61.

is concerned that the delegation of parliamentary power to the Executive in this instance should be subject to at least some level of parliamentary scrutiny and

- the proposal to allow the Secretary to delegate powers and functions under the Act to any employee in the Department, rather than this being restricted to SES employees as is currently the case (item 173).

The Committee has sought advice from the Minister on each of these matters. At the time of writing, no response from the Minister had been published.

Previous Senate committee consideration of the Australian Education Act 2013

Aspects of the Act and Australian Government funding for schools have been the subject of previous inquiries by Senate committees, including the Senate Select Committee on School Funding and the Senate Select Committee into the Scrutiny of Government Budget Measures, as reported in its First Interim report.18

The Senate Education and Employment References Committee has also examined Australian Government funding for school students with disability.19

Policy position of non-government parties

Australian Labor Party

The Australian Labor Party’s primary criticism of the Bill’s measures is that they will result, ‘based on the Government’s figures’, in $22.3 billion less recurrent funding for schools from 2018 to 2027 (and $6.3 billion less over four years from 2018 to 2021), compared to the school funding arrangements implemented by the Labor Government.20

As the Labor Senators’ dissenting report explains, combining Commonwealth and state and territory funding, the original goal was for all schools to be funded at 95 per cent of their SRS by 2019. However, in setting Commonwealth funding shares at 20 per cent of SRS for government schools and 80 per cent for non-government schools, Labor considers that the proposed school funding arrangements will not result in ‘a fair, sector-blind nor a needs-based model’.21 Instead, based on analysis by the Australian Education Union and as argued similarly in other submissions, the new arrangements will result in the majority of government schools not reaching their SRS by 2027 while nearly all non-government schools will be at or above their SRS by that time.22

By requiring states and territories to only maintain their 2017 funding levels, Labor argues that the Government is abandoning the Commonwealth-state funding model and the requirement that all jurisdictions work together to bring schools up to their full SRS entitlement as recommended by the Review of Funding for Schooling (the Gonski review).23

Other views expressed by Labor include:

- the timeframe for transitioning to the full Commonwealth share of SRS should be shorter given that under the existing arrangements participating jurisdictions would have reached their SRS targets by 2019 or 2022
- the SES score methodology should be reviewed as was the original intention under the National Education Reform Agreement
- the move to reduce the funding of ‘elite overfunded schools’ is supported and Labor would support separate legislation to achieve this
- an exposure draft of the regulations should be released before the Bill is considered by the Senate and

19. Senate Education and Employment References Committee, Access to real learning; the impact of policy, funding and culture on students with disability, The Senate, Canberra, January 2016.
21. Ibid., p. 50.
22. Ibid.
23. Ibid., p. 49.
• the increase in funding for students with disability is insufficient and Labor notes the reservations expressed about the NCCD.  

**Australian Greens**

The Australian Greens in their dissenting report on the Bill stated that they could not support the Bill in its current form and made the following recommendations:

• a shorter implementation period

• state and territory governments be required to ‘collectively bring public schools to their resourcing standard’

• establishment of an independent National Schools Resourcing Body to oversee and review all aspects of school funding, and review the SES and capacity to contribute mechanisms and

• matters being reviewed by the Review to Achieve Educational Excellence in Australian Schools (discussed elsewhere in this Bills Digest) be kept independent of changes to school funding arrangements.

**The crossbench**

Without Greens’ support, the Government needs 10 of the 12-member crossbench to pass the Bill. In brief, according to recent media reports, the positions of the crossbench senators are as follows:

• the Nick Xenophon Team (NXT) voted for the Bill in the House of Representatives. NXT member Rebekha Sharkie reportedly commented that the Bill goes a ‘long way’ to creating a needs-based funding model as envisaged by the Gonski review and that ‘Labor was misleading parents by claiming $22 billion was being cut from schools and that it was hard to understand why the Catholic sector was complaining when its funding was rising.’ Senator Nick Xenophon supports the Greens’ call for states and territories to contribute their share of the funding and a shorter implementation period

• Senator Jacqui Lambie has been reported as saying that she cannot support the Gonski 2.0 reforms unless rural and regional Catholic schools have better transition arrangements, but also reportedly said that ‘Labor’s Gonski had resulted in negligible improvement in student outcomes in Tasmania’

• it has been reported that Liberal Democrat Senator David Leyonhjelm said that costings he has received from the Parliamentary Budget Office have ‘led’ him to ‘open himself up to serious negotiations on the legislation’. Before he received the costings his position had been that he would not support the changes on the assumption that more money was being spent

• media reports suggest that Australian Conservatives Senator Cory Bernardi is opposed to the legislation, but senators Derryn Hinch and Lucy Gichuhi are ‘proving amenable’ and a spokesperson for One Nation has said that the party had ‘few concerns’ with the legislation and has indicated its support.

**Position of major interest groups**

There were 49 submissions to the Senate committee inquiry and a number of other stakeholders also presented evidence at the Committee’s hearings—following is a selection of their views.

30. P Coorey, op. cit.
35. Lists of all submissions and those who presented evidence at the Committee’s hearings is provided in: Senate Education and Employment Legislation Committee, Australian Education Amendment Bill 2017 [Provisions], op. cit., Appendices 1 and 2.
State and territory governments

There is a diversity of views about the Bill’s provisions among state and territory governments. The New South Wales, South Australian and Victorian governments have all called upon the Australian Government to continue to honour the terms of the current agreement (the National Education Reform Agreement) and all have committed to their share of the final two years of the original agreement (although Victoria is not a participating state for the purposes of the Act). 36

Proposed amendments that are of particular concern to the Queensland Government include: shifting powers from the Act to regulations (although the current regulations are already quite extensive); ‘highly prescriptive requirements’ for states and territories to implement unknown national policy initiatives as a condition of funding; requiring states to maintain funding in accordance with unknown regulations; and legislating the relationship between states and territories and the non-government sectors. 37 Contrary to the Government’s stated objective to remove the ‘command and control features’ of the Act, the Queensland Government considers the Bill’s measures are a ‘further impost on states and territories’.

While the Tasmanian Government is disappointed about the amount of funding that is proposed for Tasmania, it is ‘broadly supportive’ of the Government’s school funding plans. 38 However, the Tasmanian Government does have some concerns. These include: the use of the Nationally Consistent Collection of Data (NCCD) to allocate the students with disability loading (see ‘Key issues and provisions’ section of this Bills Digest for further information); the lack of information about the proposed regulations; and ongoing funding for preschool education, which is not a matter for the Bill.

The Northern Territory in its submission to the Committee’s inquiry into the Bill, has called for a review of funding after 2021 to ensure it is adequate. 39 It is also concerned about the requirement to retain state and territory funding effort and the pace of the implementation of national reforms.

The Western Australian Government has generally welcomed the new funding model and the additional funding for Western Australia. 40 However, it is concerned about the lengthy transition period, which it claims will financially disadvantage the state, as well as the reporting requirements.

Non-government education sector

The Catholic education sector in general opposes the Bill.

The National Catholic Education Commission’s (NCEC) criticisms of the removal of system-weighted average SES scores and its concerns about the proposed changes to the capacity to contribute percentages and the student with disability loading are raised in the ‘Key issues and provisions’ section of this Bills Digest.

The NCEC has raised a number of other issues, most notably the continued use of the SES methodology which it recommends be reviewed 41 The NCEC cites the report of the Gonski review which considered that the SES methodology was potentially inaccurate because students attending a particular school were not necessarily ‘representative of the socioeconomic averages of the areas in which they live’. The NCEC argues:

By underestimating how much higher-income families can contribute, while overestimating how much lower-income families can contribute ... SES scores likely disadvantage schools serving lower- and middle-income families, many of which are Catholic. 42

42. Ibid., p. 9.
A recent analysis of the SES methodology by the Catholic Education Commission of Victoria, *Capacity to Contribute and School SES Scores*, concluded that measures included in the SES methodology (education and occupation) ‘lack validity as proxy indicators of capacity to contribute’.

However, evidence and submissions presented to the Committee inquiry into the Bill by, amongst others Stephen Farish, the architect of the SES methodology, concur that a better alternative is not available and highlighted difficulties with other methods of assessment.

However, the Catholic education sector continues to highlight the disparities in specific schools’ SES scores, comparing, for example, a small parish school in Melbourne which has a higher SES score than Geelong Grammar. It also disputes the Government’s funding projections. The NCEC Executive Director, Christian Zahra, cites Parliamentary Budget Office figures which show that Catholic schools would lose $3.1 billion over the next ten years. He has called upon the Minister to continue the current funding arrangements into 2018 and thereby provide time for ‘a genuinely collaborative process that would deliver true needs-based funding for students in all schools across all sectors’.

Other non-government education sector representatives, such as the Independent Schools Council of Australia, Christian Schools Australia and Adventist Schools Australia, broadly support the Bill.

**Other interest groups**

Elements of the Grattan Institute’s recommendations to the Committee have been echoed by others, including the Australian Greens, the NCEC and some state and territory governments (as discussed above). Its recommendations in relation to the funding aspects of the Bill’s provisions include:

- a shorter transition period—six years instead of ten—which could be funded by applying the floating indexation rate from 2018 rather than 2021
- state and territory governments commit their share of funding so that all schools receive at least 90 per cent or 95 per cent of SRS by 2027—the Bill’s requirement that they maintain funding at 2017 levels is not enough
- a National Schools Resourcing Body be established
- the formula for determining the SRS be reviewed and
- more information about key aspects of the Bill’s provisions, particularly comparative funding information under the existing and proposed funding systems, be provided.

**Financial implications**

The Explanatory Memorandum states that the Bill’s proposed changes to school funding will result in:

- an increase of $1.5 billion in recurrent funding from 2017–18 to 2020–21—an increase of $1.1 billion for government schools and an increase of $366 million for non-government schools and
- an increase of $16.4 billion in recurrent funding from 2017–18 to 2026–27—$10.6 billion for government schools and $5.8 billion for non-government schools.

These figures show that only 9.0 per cent of the total projected increase in funding will be provided in the first four years of the ten-year transition period.

43. Ibid.
44. Ibid.
45. Catholic Education Commission of Victoria, *How can you have fair needs-based funding without fixing school SES scores?*, media release, 15 June 2017.
46. Ibid.
47. Ibid.
50. Explanatory Memorandum, op. cit., p.4.
Government figures also show that from 2017 to 2027, the average annual per student funding growth will be 5.1 per cent for government schools, 4.1 per cent per student for independent schools and 3.5 per cent for Catholic systemic schools.\textsuperscript{51}

The Bill’s transition adjustment assistance measure will have a financial impact of $13.4 million over the Budget and forward estimates and, in total, will cost $39.7 million over ten years from 2017–18 to 2026–27.\textsuperscript{52}

The additional assistance of $35.6 million for Northern Territory (NT) government schools, which is described in the Committee’s report on the Bill as ‘over and above’ the NT’s direct funding allocation, is not accounted for separately in the Explanatory Memorandum’s ‘financial implications’.\textsuperscript{53} Neither the Committee report, which states that the funding is ‘earmarked’ in the Bill, nor the Explanatory Memorandum explain the relevant provision in the Bill.\textsuperscript{54}

**Statement of Compatibility with Human Rights**

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.\textsuperscript{55}

The Parliamentary Joint Committee on Human Rights considered the Bill and reported that it did not raise human rights concerns.\textsuperscript{56}

**Key issues and provisions**

Following is a selection of the major provisions of the Bill—see the Explanatory Memorandum for an explanation of all the Bill’s provisions.

**Schedule 1, Part 1—Funding for schools**

**Indexation**

**Item 8** proposes to insert new section 11A into the Act, which defines how indexation of the base per student SRS amounts is to be calculated; namely, the indexation factor will be a composite of the Wage Price Index (75 per cent) and the All Groups Consumer Price Index number (25 per cent) or three per cent, whichever is higher.

**Proposed subsection 11A(5)** provides that the SRS indexation factor for a year may be prescribed by regulation. It is by this means that the per student SRS amounts will be indexed by 3.56 per cent from 2018 to 2020. This indexation factor was originally a 2016–17 budget measure and is only slightly lower than the current indexation rate of 3.6 per cent.\textsuperscript{57} The effect of this measure will be to set a uniform indexation rate for all schools. Currently, in addition to the indexation rate for the base per student amount, three indexation rates for Australian Government funding for schools apply, depending on a school’s funding position relative to their total SRS. For those schools which are funded below their SRS, the indexation rate is 4.7 per cent; for those schools funded at their SRS, the rate is 3.6 per cent; and, for those schools funded above their SRS, the indexation rate is 3.0 per cent.\textsuperscript{58}

**Base per student amounts, Commonwealth funding share, transitioning schools and transition adjustment funding**

**Base per student amounts**

**Items 12 and 13** propose to amend section 34 of the Act and set new re-based per student amounts for 2018. These will be $10,953 for primary school students and $13,764 for secondary school students.

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52. Explanatory Memorandum, op. cit., p. 4.
54. Ibid. Further information about the additional funding for the Northern Territory is provided in Australian Government, *Additional funding for the Northern Territory*, Quality Schools fact sheet, Australian Government, Canberra.
55. The Statement of Compatibility with Human Rights can be found at page 5 of the Explanatory Memorandum to the Bill.
58. Ibid. Subsections 60(2) and 61(3) of the Act.
Commonwealth funding share

**Item 16** proposes to insert **new section 35A** which prescribes the Commonwealth’s funding contribution for a school that is not transitioning to its SRS entitlement; that is, the Commonwealth will contribute 20 per cent of a government school’s total SRS and 80 per cent of a non-government school’s total SRS.

**Transitioning schools**

**Item 16** also proposes to insert **new section 35B** which provides the funding formula for transitioning schools; that is, those schools that are funded above or below the proposed Commonwealth share of their SRS entitlement (that is, 20 per cent of their SRS for government schools or 80 per cent of their SRS for non-government schools). Schools will be transitioned from their starting Commonwealth share to their final Commonwealth share of their total SRS entitlement at a rate of 10 percentage points each year over a ten-year period.

The proposed funding formula for transitioning schools is:

\[
\text{Starting Commonwealth share} + \left( \text{Final Commonwealth share} - \text{Starting Commonwealth share} \right) \times \text{Transition rate}
\]

**Example 1: a non-government school which is currently funded below its final Commonwealth share**

- a non-government school receiving Commonwealth funding at 70 per cent of its total SRS in 2017, will be funded at 71 per cent of its total SRS in 2018, calculated as follows: 70 + ((80-70) x 10%) = 71%
- in 2019, the school’s transition rate will increase to 20 per cent and the school will be funded at 72 per cent of its total SRS

**Example 2: a non-government school which is currently funded above its final Commonwealth share**

- a non-government school receiving Commonwealth funding at 90 per cent of its total SRS in 2017, will be funded at 89 per cent of its total SRS in 2018, calculated as follows: 90 + ((80-90) x 10%) = 89%
- in 2019, the school’s transition rate will increase to 20 per cent and the school will be funded at 88 per cent of its total SRS.

The same calculations apply to government schools with their final Commonwealth share being 20 per cent of SRS.

Of the over 9,000 schools in Australia, 347 schools are expected to start the transition above the new Commonwealth share of 80 per cent of the SRS for non-government schools and 20 per cent for government schools. 59 Most of these schools will still experience funding growth but it will be less than the indexation rate; and the Government expects that less than one per cent of schools will see funding reductions in the next four years. 60

**Transition adjustment funding**

**Item 40** proposes to insert **new section 69B** into the Act to provide financial assistance (amounting to $39.8 million over ten years) for ‘disadvantaged and vulnerable (transitioning) schools that may find it unreasonably hard to adjust to a reduction of funding’ and for the ACT Catholic education system. 61 The detail of this assistance will be as prescribed by the regulations, but it will be ‘temporary, targeted and provided on a case by case basis’. 62

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60. Ibid. Apart from the ACT Catholic systemic schools, a list of 24 independent schools that will have funding reductions was published in various newspaper articles. See, for example, P Karp, ‘Schools hit list revealed: online tool shows Gonski 2.0 winners and losers’, Guardian Australia, online edition, 9 May 2017.
62. Ibid.
More information about the proposed transition assistance is provided in a government discussion paper provided in an answer to a Senate estimates question. 63

**SES scores and capacity to contribute percentages**

The Bill does not propose to change SES scores as the basis for determining the need of a non-government school for Commonwealth funding, nor the methodology for calculating individual schools’ SES scores.

**System-weighted average SES scores**

However, items 29 to 35 propose to amend sections 52 and 53 of the Act, removing the Minister’s ability to determine an SES score for a group of schools and, thus, all schools will be funded according to their individual SES score. As a result of this provision, systemic non-government schools with a higher SES score than the current system-weighted average SES score for their system will have their capacity to contribute percentage increased and thus their Australian Government funding reduced. The requirement for the Minister to determine an SES score for an individual school will be retained.

This amendment has been strongly criticised by the Catholic education sector. 64 Currently Catholic schools in each state and territory Catholic education system, except the Australian Capital Territory (ACT), are funded according to the average of all schools in their system—this arrangement is known as the ‘system-weighted system-wide average’ SES score. 65 The SES score for ACT Catholic systemic schools is the average SES score for all Catholic systemic schools across Australia. 66 The National Catholic Education Commission (NCEC) considers that the system-weighted approach was part of the original Gonski model and that it helps to ‘ameliorate the deficiencies and potential bias in the SES methodology’. 67

The Government acknowledges that ACT Catholic systemic schools will be most affected by the removal of system-weighted average SES scores—their average annual growth per student will be -0.2 per cent from 2017 to 2021 and -0.8 per cent from 2017 to 2027. 68 As a result, additional adjustment funding will be provided to the ACT Catholic school system to freeze their 2017 funding entitlement from 2018 to 2021. 69

In contrast, while the Independent Schools Council of Australia (ISCA) acknowledges that some of their schools will lose funding as a result of this provision, the removal of the system-weighted average SES will be ‘a positive step toward creating a level playing field for all non-government schools’. 70 ISCA estimates that the provision will affect 17 independent school systems, involving 196 schools. 71

**Capacity to contribute percentages**

Item 36 proposes to amend the capacity to contribute percentages for non-government primary schools by replacing the table in subsection 54(3) of the Act. This will correct an anomaly in the Act whereby non-government primary schools within the 108 to 122 SES score band receive more funding than their counterparts in the secondary sector in spite of the fact that the cost of delivering education is much higher at the secondary level of schooling. 72

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64 For example, National Catholic Education Commission, Submission to Senate Education and Employment Legislation Committee, Inquiry into the Australian Education Amendment Bill 2013, May 2017, pp. 10–11.


66 Ibid. The Australian Education (SES Scores) Determination 2013 provides and lists the system-weighted average SES scores for all non-government school systems in Australia.


71 Ibid.

72 Senate Education and Employment Legislation Committee, Australian Education Amendment Bill 2017 [Provisions], op. cit., p. 11.
The NCEC considers that these changes, combined with the removal of system-weighted average SES scores, will result in increased fees for Catholic primary schools. However, a number of dioceses within NSW, except for the Broken Bay diocese, are reassuring parents that fees will not rise. The Independent Schools Council of Australia concurs with the capacity to contribute percentages, considering that there is ‘no rationale’ for primary school students to receive more funding than secondary students in the same SES band.

**Student with disability loading**

Item 17 proposes to provide a new student with disability (SWD) loading by replacing section 36 of the Act. Currently, a flat rate of 186 per cent of the base per student amount for SWD attending mainstream schools and 223 per cent for SWD attending special schools apply, and eligibility is based upon varying state and territory definitions of disability.

These loadings were only ever intended to be interim loadings pending the finalisation of the Nationally Consistent Collection of Data on School students with Disability (NCCD). The NCCD was implemented in response to the recommendation of the Review of Funding for Schooling (the Gonski review) that an SWD loading be based on a national definition and ‘scaled for different levels of adjustment to better reflect need’. From 2018, it is proposed that there be differentiated loadings according to the top three levels of adjustment needed for students to access and participate in education as identified in the 2017 NCCD guidelines. The loadings will be, as a percentage of the base per student amounts, 42 per cent, 146 per cent and 312 per cent for primary school students and 33 per cent, 116 per cent and 248 per cent for secondary school students.

The NCEC is concerned about the proposed change to the SWD loading, regarding the change as ‘premature’ and that it should not happen until the NCCD is ‘robust’. On its modelling, the NCEC believes that the proposed new loadings will have a ‘significant negative impact’ on Catholic school funding. Disability advocates also have reservations about the Bill’s provisions in relation to SWD and the use of the NCCD to set the SWD loading. For example, Children and Young People with Disability Australia (CYDA), in its submission to the Committee inquiry on the Bill, considers that the Bill has a limited focus on students with disability and provides ‘little certainty’ about future reform. The CYDA also believes the NCCD data is not reliable enough and recommends that a date for a review of the disability loading be inserted into the Bill.

**Schedule 1, Part 2—Other policy changes**

Key provisions in Part 2 of the Bill include:

- **items 45 and 46** which replace and update the Preamble and objects of the Act and
- **items 59 and 60** which substitute a new section 22 and insert new section 22A that set out the conditions of financial assistance. These include:
  - per item 59, the requirement that the states and territories be party to a national agreement relating to school education reform. This agreement will be informed by the Review to Achieve Educational Excellence in Australian Schools, chaired by David Gonski, which has been established to ‘build the evidence base needed to ensure the additional funding provided by the Australian Government is spent

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73. National Catholic Education Commission, op. cit., p. 11.
74. P Singhal, ‘Catholic schools back away from fee rise talk’, *The Sydney Morning Herald*, 1 June 2017, p. 11.
75. Independent Schools Council of Australia, op. cit., p. 18.
76. Section 17 of the *Australian Education Regulation 2013*.
81. Ibid., p. 15.
83. Ibid., p. 5.
on proven initiatives that make a difference to student outcomes’. The Review will report by the end of the year and negotiation of the new school reform agreements with the states and territories will be held in the first half of 2018 and

- per item 60, which inserts new section 22A, the requirement that states and territories maintain funding levels for school education in accordance with the regulations. As explained in the Minister’s second reading speech on the Bill and the Department of Education and Training’s submission to the inquiry into the Bill, states and territories will be required to maintain their 2017 funding in real terms to ‘prevent cost-shifting to the Commonwealth’—this requirement will also be subject to consultations with the states and territories.

Concluding comments
If the Bill is not passed, the Act’s current funding arrangements will remain. This means that only the ACT, New South Wales and South Australia, which are participating states under the Act because they concluded bilateral agreements with the Labor Government, and non-government schools, will be funded according to the current SRS formula. Funding for the other state and territory government education systems would have to ‘fit within the remaining funding envelope’.

The Department of Education and Training has estimated that if the current arrangements were to continue, by 2019:

- only 116 schools would reach 100 per cent of the SRS, with 9,018 schools still funded below
- 5,524 schools (which includes 5,050 government schools) would be below the original funding target of 95 per cent of SRS, underfunded by an average of almost $458,000 for every school and
- about 256 schools would receive more than the full SRS by an average of $1.2 million.

Further, by 2027, 6,966 schools would still be below their full SRS entitlement by an average of approximately $690,000. (The impact of state and territory government funding is not apparent from these figures.) The proposed school funding arrangements may change. There is now a report that the Government is prepared to make concessions to secure the Greens’ support by adopting recommendations made in their dissenting report on the Bill. According to the media report, these concessions include:

- reducing the transition period from ten to six years, which would increase funding by $1.5 billion over the Budget’s forward estimates period and ‘as much’ as $5 billion over ten years
- the establishment of a national schools resourcing body to act as an independent watchdog (this was recommended by the Gonski review)
- additional assistance to the Northern Territory whereby the Commonwealth would contribute 25 per cent of the SRS for government schools and
- the requirement that states and territories increase their share of funding to 75 per cent of the SRS.

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84. Australian Government, Review to achieve educational excellence in Australian schools, Quality Schools fact sheet, Australian Government, Canberra. See also the Review’s terms of reference.
85. Ibid.
88. Ibid., p. 10.
89. Ibid.
91. Ibid.