2017–2018

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

Australian Education Amendment Bill 2017

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved on behalf of the Government
(Sheet number GX158, GX160 and GX167)

(Circulated by the authority of the Minister for Education and Training,
Senator the Honourable Simon Birmingham)
The Australian Education Amendment Bill 2017 (the Bill) passed the House of Representatives on 29 May 2017 which was the first step to realigning the legislative framework to support a funding model that is fair, transparent and needs-based and one that ties funding to reforms that will improve student outcomes and provides strengthened accountability mechanisms.

The Bill was referred to the Senate Education and Employment Legislation Committee (the Committee) for scrutiny. Submissions were open to the public and evidence was sought from schooling stakeholders at two public hearings.

The Committee tabled their report on 14 June 2017 with a sole recommendation that the Senate pass the Bill in its current form. The Committee noted that the changes in the Bill will “sweep away the complex, opaque and unfair school funding system entrenched by the previous government” and acknowledges that the Bill will:

- create a system for public funding of schools that is fair and transparent
- ensure the highest levels of funding growth will occur where schools are furthest behind, and
- put an end to students with the same needs being treated differently depending on where they live.

Through the Senate Inquiry process and separate consultations with the states and territories and the non-government sector, however, some issues and concerns were revealed that can be addressed through Government amendment without compromising the intention of the Bill.

In addition to these amendments, there are also two technical amendments required to the Bill to ensure the government’s policy intent is accurately reflected.

FINANCIAL IMPACT STATEMENT

The changes to the calculation of school recurrent funding under these amendments compared to the original Bill result in a $1.1 billion increase in additional funding over Budget and forward estimates from 2017-18 to 2020-21.
PROPOSED GOVERNMENT AMENDMENTS

The Government proposes the following amendments to the Bill.

**Sheet GX158**

**State and Territory contributions**

The amendments in sheet GX158 replace the current paragraph 22A at item 60 of Schedule 1 to the Bill with a number of new provisions which strengthen requirements on states and territories to contribute their share of funding for school education with the aim of reaching at least 95% of the SRS for all schools by 2023.

These amendments require states and territories to transition (by 2023) to provide funding for both government and non-government schools.

A state or territory with a starting state-territory share (to be prescribed by the regulations) of less than the final state-territory percentage (75% for government schools or for 15% non-government schools) of the total SRS amount for relevant schools in that state or territory will be required to maintain that percentage of funding in 2018 before transitioning, in five equal steps to the relevant state-territory percentage.

A state or territory with a starting state-territory share of between 75% and 80% for government schools or 15% and 20% for non-government schools will be required to maintain that percentage of the total SRS amount for relevant schools in that state or territory.

A state or territory with a starting state-territory share greater than 80% for government schools or 20% for non-government schools will have to maintain that percentage of funding in 2018 and remain at or above 80% or 20% in all later years.

The amendments allow for the state-territory share percentages for any year between 2018 to 2023 to be negotiated and enshrined in the bilateral school education reform agreement for a state or territory (the agreement mention in paragraph 22(2)(b)).

**Sheet GX160**

**Accelerated Transition**

The currently drafted section 35B at item 16 of Schedule 1 to the Bill sets out the formula for determining how a school will transition from its starting Commonwealth share of the SRS funding amount to the consistent Commonwealth share by 2027.

In the provisions as currently drafted the Commonwealth share for a year is determined by subtracting the starting share from the ‘final’ share and multiplying the result by the ‘transition rate’ (10% in 2018 incremented by 10 percentage points each year until it reaches 100% in 2027). The result of the formula is added to the starting share to produce the Commonwealth share for the year.

The amendments made in sheet GX160 provide for the Act to differentiate between schools transitioning down towards the consistent Commonwealth share and those who are transitioning up.
These amendments add the definition of a six year transitioning school as one whose starting Commonwealth share is less than the relevant final share (be it 20% for a government school or 80% for a non-government school).

The amendments stipulate that such schools will transition to their relevant Commonwealth share in six equal steps between 2018 and 2023.

This is achieved by applying the same methodology described above but using a different transition rate of 16.67 percentage points incremented per annum until the cap of 100% is reached.

Sheet GX167

Calculation of a schools ‘starting Commonwealth share’

Item (2) replaces the current paragraph 35B(4)(c) with a new paragraph.

Proposed section 35B of the Act will determine the Commonwealth share of a transition school in a transition year. One component of the formula for determining a school’s Commonwealth share during a transition year is its ‘starting Commonwealth share’, which is the ratio of the ‘2017 recurrent funding amount’ to the ‘adjusted SRS amount’ of the approved authority for the school.

Proposed subsection 35B(4) of the Act defines the adjusted SRS amount of an approved authority for a school. Clarification is required to remove ambiguity in the current subsection 35B(4) and ensure the arrangements in the Act accurately reflect the costed funding model and payment system. There are three main elements that are covered by this amendment:

- Firstly, the proposed amendment confirms that the ‘adjusted SRS amount’ should use the new SRS funding amounts that have been recalculated using up-to-date data, not the current amounts for 2017 under the Act.
- Secondly, the SES scores used in working out the adjusted SRS amount need to be the SES scores that will be in effect for 2018.
- Thirdly, the indexation arrangements applying to the maximum size loadings and 2016 starting amounts are clarified to be those worked out under current indexation arrangements (3.6%) rather than the proposed section 11A of the Act.

Consequently, paragraph 35B(4)(c) is being amended to ensure that, when the adjusted SRS amount for a school’s approved authority is being calculated for the purposes of determining the school’s starting Commonwealth share, the calculation uses amounts that accurately reflect the notional application of the 2018 needs-based funding model to 2017.

Approved system authorities and needs-based funding arrangements

Item (3) adds the definition of the term approved system authority to the Bill as having the meaning given by subsection 78(6).
Item (5) amends item 89 of Schedule 1 to the Bill to replace the proposed subsection 78(3) with new subsections 78(3) to (6).

The proposed subsections 78(3) to (6) will require that approved authorities for more than one school distribute Commonwealth financial assistance in one of two ways:

1. In accordance with the Commonwealth funding model as set out in the Act; or
2. In accordance with their own funding arrangement based on other factors. Such arrangements must comply with a number of requirements.

The proposed amendments set out that a ‘funding arrangement based on other factors’ must be a needs-based funding arrangement which provides an amount (per student) that represents the funding required to support a student with minimal disadvantage, taking account of efficiencies that can be realised while improving educational outcomes.

Any such arrangement must also include loadings to recognise additional need – this includes four student based loadings for Aboriginal and Torres Strait Islander students; students with disability; students with socio-educational disadvantage and students who have low English proficiency as well as two school based loadings relating to the size and location of a school.

In determining their own needs based funding arrangements, the approved authority is able to consider any matters it considers relevant in determining the needs of its schools, including consideration of the sustainability of the schools for which the authority is approved.

The proposed amendments also require that the approved authority’s needs-based funding arrangement is publicly available and transparent.

An approved authority which distributes Commonwealth financial assistance in accordance with their own funding arrangement in compliance with these provisions is an approved system authority.

These amendments largely mimic current the current requirements under section 61 of the Australian Education Regulation 2013 and as such any duplicative, redundant or contradictory elements will be repealed from the regulations.

Repeal the definition of ‘student with disability’

Item (4) adds a paragraph (o) at the end of item 48 of Schedule 1 to the Bill, to repeal the redundant definition of ‘student with disability’.

This definition is superfluous given the new terminology used in the revised student with disability loading inserted by item 17 of Schedule 1 to the Bill. The loading will no longer refer to “the number of students with disability at the school for the year” but rather the number of students classified as needing a supplementary, substantial or extensive level of adjustment.

Minister’s reporting requirements

Item (6) clarifies reporting requirements imposed on the Minister.
Independent reviews of arrangements and requirements relating to funding

Item (7) in sheet GX167 replaces items 106 and 107 of Schedule 1 to the Bill which amend section 128 of the Act (relating to review of, or for the purposes of, intergovernmental agreements).

The amendments insert a new section 128 which requires the Minister to cause independent reviews of the operation of the Act, and in particular of arrangements and requirements relating to funding for schools to be conducted.

Subsections 128(2) to (4) stipulate that such reviews must be conducted by a review board (the National School Resourcing Board) of suitably experienced individuals appointed by the Minister having regard to any nominations from the Ministerial Council and certain national representative bodies.

Subsections 128(5), (6) and (7) require that periodic reviews address specific areas of compliance with the Act as well as any other matters set out by the Minister in written terms of reference. In setting any such terms of reference the Minister must consult the Ministerial Council and certain national representative bodies and consider any regulations prescribed for the purposes of paragraph 128(7)(a).

The Minister will also be required to provide reports of the review to the Ministerial Council and certain national representative bodies, and table such reports in Parliament. The Minister may also have regard to reports in contemplating action in relation to a state, territory or approved system authority, and must consider the results of reviews and impact of review on the Act.

The new section 128 will commence on the day the Act receives Royal Assent (see item (2)), allowing the first independent review board to be appointed and commence work as soon as practicable.