Australian Education Bill 2012

Marilyn Harrington
Social Policy Section

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Australian Education Bill 2012

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House: House of Representatives

Portfolio: Education, Employment and Workplace Relations

Commencement: 1 January 2014

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose of the Bill

The purpose of the Australian Education Bill 2012 (the Bill) is to:

• articulate and acknowledge the Government’s aspirations for school education
• set goals for Australian schooling that address those aspirations
• commit to a national plan for improving school performance and student outcomes
• itemise the reform directions for a national plan that will achieve the Government’s aspirations and goals and
• make agreement to implement a national plan by education authorities a prerequisite for receiving Australian Government funding for schools with grants based on outlined principles.

Background

The Bill is the first step in the implementation of the Government’s response to the final report of the Review of Funding for Schooling (the Gonski Review).¹

The Gonski Review presented a blueprint for a major overhaul of funding for school education. It included a fundamental realignment of the historic funding roles of the Australian and state and territory governments whereby there would be a ‘more balanced alignment of public funding


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responsibilities for government and non-government schools’, with a focus on improving the educational outcomes of disadvantaged students.\(^2\)

The Gonski Review also acknowledged that funding alone would not be sufficient to improve educational outcomes and called for ‘continued and renewed efforts to strengthen and reform Australia’s schooling system’.\(^3\)

The Australian Government’s formal response to the Gonski Review’s final report incorporates most of the core recommendations, including:

- a dollar per student resource standard and various dollar loadings for disadvantage, regardless of the type of school a student attends and
- a National Plan for School Improvement (the National Plan).

In addition, the Government’s response:

- committed to an overarching goal of ensuring that by 2025 Australia is ranked amongst the top five countries in the world for student performance in reading, science and mathematics and
- provided a timeline for the reforms, including the commitment to introduce, before the end of 2012, a Bill for the Australian Education Act, which would ‘enshrine the core principles’ of the National Plan and the new approach to school funding.

In total, the Government expects the National Plan, when fully implemented by 2020, will see an additional $6.5 billion spent on schools each year by Australian and state and territory governments. This amount is in line with the estimates in the final report of the Gonski Review.\(^4\)

The Government’s White Paper Australia in the Asian Century, released in October 2012, is also relevant to the Bill.\(^5\) The White Paper committed all governments to improving access to Asian studies in schools through the Australian Government’s National Plan. It also announced that Asian studies will be embedded across the Australian Curriculum, students will have access to at least one priority language (Mandarin, Hindi, Indonesian and Japanese) and all schools will ‘engage with’ at least one school in Asia to support the teaching of a priority Asian language.\(^6\)

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3. Ibid., p. xix.
Key issues and provisions

The Preamble

The Preamble to the Bill, while part of the proposed Act, is not a provision. A preamble is defined as ‘an introductory statement in a constitution, Act or other legal document, outlining the reasons for, or objectives of, the document’.7

In this Bill, the Preamble sets out the Government’s aspirations for school education. Broadly, these relate to ensuring quality and equity of schooling for all students, regardless of their background and that of their school, thereby also enhancing Australia’s prosperity and its world standing. There is also:

- an emphasis on opportunities for Australian students to engage with Asia, in line with the recommendations of the Asian Century White Paper
- an acknowledgement that all education providers have a role in realising these aspirations for school education and
- the need for schools to adopt the opportunities offered by digital education and new evidence-based teaching methods.

The Bill’s statement of aspirations is not without precedent in Commonwealth legislation, although such statements are not necessarily enshrined in a preamble. The Statement for Australia’s Carers, for example, is a schedule to the Carer Recognition Act 2010.8

Provisions

Clause 3 of the Bill proposes the Government’s specific goals for Australian schooling. Similar goals for Australian schooling are currently provided by the Melbourne Declaration on Educational Goals for Young Australians (the Declaration), agreed to by all education ministers in 2008.9 The Declaration underpins the formulation of Australian Government and state and territory government school education policies and programs.10

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The goal for Australia to be ranked by 2025 as one of the top five highest performing countries (based on the performance of Australian school students in international tests in reading, science and mathematics and the quality and equity of Australian schooling) is new. The imperative to improve Australia’s ranking has in part been driven by Australia’s declining performance in international tests of student attainment. Professor Geoff Masters, Chief Executive of the Australian Council for Educational Research, described the results from the latest international studies of student achievement as more than disappointing.\textsuperscript{11} Australia was significantly outperformed by 21 countries in Year 4 reading in the 2011 Progress in International Reading Literacy Study (PIRLS) and Australian performances in mathematics and science, as measured by the Trends in International Mathematics and Science Study (TIMSS), have largely stagnated over the past 16 years.\textsuperscript{12}

Clause 6 of the Bill proposes to commit the Government to working with other education authorities, government and non-government, to develop and implement a national plan for school improvement.

Clause 7 of the Bill prescribes the reform directions for the proposed national plan. In general, the merit of these reform directions is widely acknowledged and well supported by research. The reform directions also build on related developments already underway in schools by the Australian and state and territory governments and through the Council of Australian Governments (COAG). For example, there are programs in place to promote local decision making by schools as well as programs and frameworks to improve teacher quality.\textsuperscript{13}

Similarly, the provisions in clause 8 of the Bill to develop benchmarks for assessing school and student performance and implement arrangements to increase transparency, assess and improve school performance and gather and share evidence about best practice are also a continuation of efforts that have been underway for some time. The Australian Curriculum, Assessment and Reporting Authority and the My School website have been instrumental in this regard.\textsuperscript{14} Action has also been taking place through COAG. Its Standing Council on School Education and Early Childhood, for instance, at its meeting in December 2012, endorsed the National School Improvement Tool.

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\textsuperscript{11} G Masters (Chief Executive, Australian Council for Educational Research), ACER releases results from latest international studies of student achievement, media release, 13 December 2012, viewed 1 February 2013, \url{http://www.acer.edu.au/media/acer-releases-results-from-latest-international-studies-of-student-achievement/}

\textsuperscript{12} Ibid.


\textsuperscript{14} Australian Curriculum, Assessment and Reporting Authority (ACARA) website, viewed 4 February 2013, \url{http://www.acara.edu.au/reporting/reporting.html} and ACARA, ‘My school’, website, viewed 4 February 2013, \url{http://www.myschool.edu.au/}

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developed to ‘help schools review and reflect on their efforts to improve the quality of classroom teaching and learning, and student performance’.  

**Clause 9** of the Bill proposes to make the signing of an agreement to implement the national plan by state and territory education authorities a prerequisite for Australian Government funding for schools. Funding conditions have always been a feature of Australian Government funding for schools. The current conditions are prescribed by the National Education Agreement for government schools and by the *Schools Assistance Act 2008* for non-government schools.

The Minister for School Education, Peter Garrett, has warned that states will not receive additional funding if they do not sign up to the new funding model. According to the Minister, those states that do not sign up will see their funding decline because they will be ‘bound by the existing arrangements’ under which increases (indexation) in Australian Government funding are tied to increases in state expenditure on schools.  

**Clause 10** of the Bill states that the proposed Act does not create legally enforceable rights or duties. This seems curious given the current legislative provisions for schools. This type of provision is not unprecedented and there are examples of similar provisions in other Commonwealth statutes, although the phrasing is not always the same. Two examples are section 10 of the *Carer Recognition Act 2010* and section 3 of the *Budget of Charter Honesty Act 1998*. Legally enforceable provisions in the Bill, similar to those that currently exist, may be included when amendments for the school funding arrangements are introduced, as foreshadowed in the Explanatory Memorandum to the Bill.

**Financial implications**

There is no financial impact associated with the Bill.
Committee consideration


At the time of the writing of this Bills Digest, the committees had not reported and no submissions to the inquiries had been published.

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights can be found at page 11 of the Explanatory Memorandum to the Bill. 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.

Reaction to the Bill

So far most of the reaction to the Bill is not to its actual content but rather to what it does not include. There is a sense of impatience on the part of all school education stakeholders as they await the final details as to how schools will be funded.

The Opposition’s immediate response to the Bill was to criticise its lack of detail, particularly with regard to the school funding changes. Christopher Pyne, the Shadow Minister for Education, claimed the Bill was misleading: ‘To characterise this Bill as the “Gonski Model” is false. There is no substance in the Bill at all, no appropriation of funding and no information as to how much funding schools will receive’. 21 The Shadow Minister has called for the current funding model for non-government schools to be extended for two years, thereby providing ‘budget certainty’ for the sector. He considers there is not enough time to roll out a new system by 2014. 22

The Independent Schools Council of Australia (ISCA) welcomed the Bill’s introduction but has urged the Government to ‘quickly’ finalise future funding arrangements so as to provide school...


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communities with ‘an assurance that there will be stable, robust and transparent public funding of independent schools from the commencement of 2014’. ISCA has also called on the Government to ensure that the costs of the National Plan for School Improvement are factored into future funding arrangements.23

The Australian Education Union (AEU) welcomed the Bill as an ‘historic change’ and also urged the final legislation be negotiated as a matter of urgency by the Commonwealth and the states and territories.24 It has warned of ‘massive cuts’ to schools if there is no agreement on the Gonski Review’s reforms.25

Rob Oakeshott, the Independent Member for Lyne, when responding to the exposure draft of the Bill, was disappointed with the Bill’s ‘aspirational rhetoric’ and its lack of funding detail. He also criticised the politicisation of school funding and called on both major political parties to ‘start to put students first and put their politics last’.26 Both he and the Independent Member for New England, Tony Windsor, are focussed on the inequity in educational outcomes for disadvantaged students, including their constituency, rural and regional students. Both have called on governments to deliver the additional funding recommended by the Gonski Review.27 In common with others, Tony Windsor has highlighted the latest international student achievement results to emphasise the urgency of the situation.28

The Australian Greens are also impatient for the school funding reforms and have urged education ministers to ‘negotiate in good faith’. They are concerned that the Bill is not legally binding and argue that without the school funding reforms, the Bill is ‘just a set of “nice” aspirations’.29

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29. P Wright (Greens spokesperson for Schools), Work together on Gonski for nation’s sake, media release, 6 December 2012, viewed 4 February 2013, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2090868%22

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There is still doubt about how successful negotiations will be with immediate criticism by some state governments that the Bill was ‘impinging on states’ rights ahead of being asked to contribute billions of dollars to the changes’. With regard to the National Plan, there are encouraging signs with the states and territories agreeing at the latest meeting of education ministers to continue to work on its development. However, the future of the Government’s school funding plan is far less certain with the states remaining very concerned about how much the Australian Government will be expecting them to contribute.

Concluding comments

The Bill fulfils the Government’s commitment, given in its response to the final report of the Gonski Review, that it would introduce legislation before the end of 2012 which would ‘enshrine the core principles of our National Plan for School Improvement and a new approach to funding’. The Prime Minister in her second reading speech summarised the Bill as providing ‘the architecture of the funding, the connection between funding and school improvement, and the directions of the improvement plan’.

The current Bill is only the first step in the legislative process to implement the Government’s plan for the future of school education in Australia. The Prime Minister in her second reading speech stated that the Bill ‘legislates for the Commonwealth’s funding model’. However, there are no specific provisions regarding financial arrangements, other than to tie Australian Government funding to agreement by education authorities to implement the national plan for school improvement.

and P Wright (Greens spokesperson for Schools), *Fixing our education system cannot wait*, 12 December 2012, viewed 4 February 2013, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2103252%22


35. Ibid.
The Government’s intention is for subsequent amendments to the Bill once the future school funding plan is finalised. The Explanatory Memorandum advises that amendments to the Bill are planned for 2013, with the aim that the new funding arrangements will apply from 1 January 2014.\footnote{Explanatory Memorandum, Australian Education Bill 2012, p. 1, viewed 25 January 2013, \url{http://parlinfo.aph.gov.au/parlinfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr4945_em_51172c7e-ec24-487f-b2d3-80e2e5e60082%22}} However, the Government’s funding plans are yet to be finalised. The Minister has announced that this will occur following the release of 2011 My School financial data, scheduled for late February.\footnote{P Garrett, More transparency about school funding and results agreed by education ministers, op. cit.} Given this timeline, it seems the Government has set itself a tight deadline with its commitment to have the new school funding plan finalised by the first COAG meeting of 2013.\footnote{J Gillard (Prime Minister), A National Plan for School Improvement, speech to National Press Club, op. cit.}

While the aspirational goals for school education and a national plan for school improvement are important, it is most likely inevitable, given the views expressed so far, that debate on the Bill will focus on how schools will be funded beyond 2013 after the current funding arrangements expire. Whatever is the outcome for the Government’s school funding plan, it is essential that new school funding arrangements be finalised in legislation by the end of this year.