



Senator the Hon Simon Birmingham

Minister for Education and Training
Senator for South Australia

Our Ref MC17-004604

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
Parliament House
CANBERRA ACT 2600

10 AUG 2017

Dear Senator *Helen,*

I thank the Senate Standing Committee for Scrutiny of Bills for its letter of 15 June 2017, seeking my advice on a number of issues related to the Australian Education Amendment Bill 2017 (the Education Amendment Bill) and the Education Legislation Amendment (Provider Integrity and Other Measures) Bill 2017 (the Provider Integrity Bill).

As the Committee is aware, the Education Amendment Bill was passed by Parliament on 23 June 2017 and received Royal Assent on 27 June 2017. Due to the timeframes involved, there was insufficient time to consider the Committee's comments prior to passage of the Education Amendment Bill.

I have attached my response to the issues raised by the Committee regarding the Education Amendment Bill. My response to the Committee's comments on the Provider Integrity Bill has been provided separately.

I have also attached an Exposure Draft of the *Australian Education Amendment (2017 Measures No. 1) Regulations 2017* which amends the *Australian Education Regulation 2013*, the delegated legislation of the *Australian Education Act 2013* (the subject of the Education Amendment Bill). This Exposure Draft was released for consultation but does not represent all of the required amendments. Further changes are likely to be made through the consultation process.

I have emailed a copy of this letter and its attachments to the Scrutiny of Bills Committee secretariat.

In conjunction with the Exposure Draft, I trust that my attached response will address the Committee's comments and assist its understanding of the Education Amendment Bill.

Yours sincerely

Simon Birmingham

Encl.

**Response to the Senate Standing Committee for Scrutiny of Bills:
The Australian Education Amendment Bill 2017**

Broad delegation of legislative power – Commonwealth share

The Committee notes the Bill inserts a new section 35A into the *Australian Education Act 2013* (the Act) that sets the ‘Commonwealth share’ for government (20 per cent) and non-government schools (80 per cent), but that this can also be set by regulation. The Committee suggests a limit on the extent Commonwealth share can be set by regulation.

Although the Act provides for transition to the Commonwealth share over a six or 10 year period, the Act is intended to cover Commonwealth funding for schools into the future. The Act will be subject to ongoing reviews (see, for example, section 128), ensuring the Act continues to operate as intended, aligns with Government policy and reflects both national and bilateral agreements with states and territories on school funding. The ability to set Commonwealth share by regulation allows more efficient response to any circumstances that may arise requiring a modified share percentage.

It is not possible at this time to predict the nature of any limits that could appropriately be imposed on setting Commonwealth share by regulation.

As noted in the Explanatory Memorandum to the Bill and by the Committee, regulations setting Commonwealth share will be subject to parliamentary scrutiny and disallowance. This process will allow the Senate to vigorously debate any change, and a variety of stakeholders to contribute to any discussion and have their interests represented.

I consider this process represents sufficient practical and political oversight of the power to set Commonwealth share by regulation.

Significant matters in delegated legislation – transition adjustment funding

The Committee notes the Bill inserts a new section 69B into the Act, empowering the Minister to determine an amount of transition adjustment funding for a transitioning school for a transition year. The Committee asks for my advice on a number of issues regarding transition adjustment funding.

The Explanatory Memorandum sets out the purpose of the new section 69B at pages 18–19: to assist schools under financial hardship due to transitioning to the Commonwealth share and its approved authority is unable to distribute recurrent funding to rectify any hardship. Pages 23–24 also highlight how parliamentary oversight is achieved.

The terms of new section 69B replicate the existing section 69A ‘Funding in prescribed circumstances’. However, section 69B is more limited in scope as it only applies to transitioning schools for transition years. The practice for drafting regulations for section 69B will also be the same as section 69A.

Currently, the *Australian Education Regulation 2013* (the Regulation) sets out prescribed circumstances under which determinations of funding under section 69A can be made. This includes formulas for calculating maximum amounts payable, limits on amounts for schools or limits on total amounts in given years. Regulations made under section 69B will also include relevant financial limits.

The Explanatory Memorandum outlines the high level eligibility for section 69B funding (as above). It is important that legislative framework does not unduly limit the capacity of the Australian

Government to respond effectively to potential hardship that may arise for schools. I also note that criteria for transition adjustment funding were subject to considerable discussion between the Government and stakeholders during the Bill's passage, and remain subject to ongoing discussions. It will not be possible for the Minister to make determinations of financial assistance under section 69B without prescribed circumstances in regulations, and this determination cannot be contrary to such regulations. In this way, prescribed circumstances for funding under s 69B will be subject to parliamentary scrutiny and disallowance. Further, as the Explanatory Memorandum notes, section 69B funding is appropriated under annual appropriation Acts, subject to parliamentary oversight.

Parliamentary scrutiny of conditions on grants to states – section 22

Sections 22 and 22A of the amended Act impose requirements on states and territories as conditions of financial assistance payable by the Commonwealth under the Act. The Committee seeks my advice on if section 22 of the Bill could be amended to include high level policy initiatives and school education reform priorities. The Committee also requests my advice on its suggestion to table in parliament and publish on the internet the national and bilateral agreements mentioned in amended section 22.

I note current section 22 of the Act only requires states and territories to 'implement national policy initiatives for school education in accordance with the regulations'. The Regulation specifies these policy initiatives at its section 10. By contrast, the amended paragraph 22(1)(a) requires states and territories to implement national policy initiatives 'agreed by the Ministerial Council from time to time'. The policy initiatives, reform program and projects agreed by the Ministerial Council are published on the Council's website at www.educationcouncil.edu.au. Further, referencing Ministerial Council agreements allows the legislation to remain current as new initiatives are endorsed, responding to the priorities of the Council.

I note the Minister must consult the Ministerial Council prior to making regulations prescribing additional national policy initiatives for amended Act paragraph 22(1)(b), and have regard to any relevant Council decisions (see amended Act subsection 130(5)). These regulations will be subject to parliamentary scrutiny and disallowance.

In accordance with usual practice, agreements between the Commonwealth and states and territories for school education reform will be published on the Council on Federal Finance Relations website at www.federalfinancialrelations.gov.au. The Regulation will prescribe those agreements and I expect will note the website where they can be found. The agreements will therefore be publicly available.

I note that the Bill was amended before passing regarding states and territories maintaining funding levels. The amended Act section 22A now describes requirements around state-territory contributions, rather than simply in accordance with the regulations.

Broad delegation of administrative power – Secretary's power to delegate

The Committee notes that the Bill amends subsection 129(3) of the Act to enable the Secretary of the Department of Education and Training to delegate their powers under the Act to 'any APS employee'. The current Act only allows Secretary delegation to SES employees in the department.

The Secretary has a number of powers under the Act and Regulation that are of a routine administrative nature.

For example, and to provide additional context, the Secretary may allow a period longer than 30 days for lodgement of an application for internal review (subparagraph 120(2)(c)(ii) of the Act); allow a period longer than seven days after a census day for lodgement of a census return (paragraph 46(5)(b) of the Regulation); determine the form and manner of census returns (paragraph 46(3)(b) of the Regulation); arrange the use of computer programs to assist with decision-making under the Act (section 124 of the Act); and specify categories of information for the purposes of census returns (paragraph 50(1)(b) of the Regulation).

I consider that it is appropriate that these kinds of powers be exercisable by officers of the department below the level of SES employee. This further ensures that the Secretary will be able to delegate their powers to be exercisable by the same level of employee as the Minister currently can.

I note also that the delegation powers of both the Minister and the Secretary under the Act are limited to APS employees of the department.

EXPOSURE DRAFT



EXPOSURE DRAFT (30/06/2017)

Australian Education Amendment (2017 Measures No. 1) Regulations 2017

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2017

Peter Cosgrove
Governor-General

By His Excellency's Command

Simon Birmingham [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for Education and Training

EXPOSURE DRAFT

EXPOSURE DRAFT

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EXPOSURE DRAFT

1 Name

This instrument is the *Australian Education Amendment (2017 Measures No. 1) Regulations 2017*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1, items [...] to [...]	1 January 2018.	1 January 2018
3. Schedule 1, items [...] to [...]	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Australian Education Act 2013*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

EXPOSURE DRAFT

Schedule 1—Amendments

Australian Education Regulation 2013

1 Subsection 4(1) (definition of 5 national reform directions)

Repeal the definition.

2 Subsection 4(1) (definition of approved system arrangement)

Repeal the definition.

3 Subsection 4(1) (definition of approved system authority)

Repeal the definition.

4 Subsection 4(1) (definition of Australian Professional Standard for Principals)

Repeal the definition.

5 Subsection 4(1) (definition of boarding Aboriginal and Torres Strait Islander student)

Repeal the definition.

6 Subsection 4(1)

Insert:

census day has the meaning given by subsection 9B(1).

census day enrolment has the meaning given by subsection 9A(1).

census reference period has the meaning given by section 9C.

7 Subsection 4(1) (definition of Ministerial Council disability guidelines for the year)

Repeal the definition, substitute:

Ministerial Council disability guidelines, for a year, means the guidelines for the Nationally Consistent Collection of Data on School Students with Disability approved by the Ministerial Council for the year.

8 Subsection 4(1)

Insert:

NAPLAN Online Data Extract Dictionary means the NAPLAN Online Data Extract Dictionary, issued by ACARA, as in force from time to time.

Note: The NAPLAN Online Data Extract Dictionary could in 2017 be viewed on ACARA's website (<http://www.acara.edu.au>).

student with disability for a year means a student about whom information must be provided, as specified in the Ministerial Council disability guidelines for the year.

9 Section 5

Repeal the section.

10 After Subdivision A of Division 2 of Part 1

Insert:

Subdivision AA—SRS indexation factor

6A SRS indexation factor

For the purposes of subsection 11A(5) of the Act, the SRS indexation factor for 2019 and 2020 is 3.56%.

11 Subparagraph 6(a)(i)

Repeal the subparagraph, substitute:

- (i) is a Table A provider or a Table B provider (within the meaning of the *Higher Education Support Act 2003*).

12 Section 7

Before “For section”, insert “(1)”.

13 Section 7 (cell at table item 2, column 1)

Repeal the cell, substitute:

South Australia (other than schools specified in Schedule 2)

14 At the end of section 7

Add:

- (2) For the purposes of section 15 of the Act, the levels of education that constitute primary education for schools in South Australia specified in Schedule 2 are as set out in the Schedule.

15 Section 8

Before “For section”, insert “(1)”.

16 Section 8 (cell at table item 2, column 1)

Repeal the cell, substitute:

South Australia (other than schools specified in Schedule 2)

17 At the end of section 8

Add:

- (2) For the purposes of section 15 of the Act, the levels of education that constitute secondary education for schools in South Australia specified in Schedule 2 are as set out in the Schedule.

18 At the end of Part 1

Add:

EXPOSURE DRAFT

Subdivision C—Census day enrolment

9A The number of students at a school for a year

- (1) For the purposes of section 16 of the Act, the number of students at a school (the school's *census day enrolment*) for a year is the number of primary and secondary students:
- (a) who are enrolled at the school on the census day for the school for the year; and
 - (b) whose enrolment is for education at a level specified for the school in the approval of the approved authority for the school; and
 - (c) who have a pattern of regular attendance at the school, or at a school generally, during the year; and
 - (d) whose attendance is, for at least one day during the census reference period for the school for the year:
 - (i) at a location specified for the school in the approval of the approved authority for the school; or
 - (ii) as a distance education student.

Counting part-time students

- (2) For the purposes of working out a census day enrolment, a student who is not undertaking a full-time study load is to be counted as the fraction of the full-time study load which the student is undertaking.

Minister may determine that a person be included

- (3) The Minister may, in writing, determine that a person who does not meet the requirements set out in paragraphs (1)(c) and (d) is to be included in a school's census day enrolment as a primary student or secondary student (including as a part-time student) if the Minister is satisfied that special circumstances justify the determination.
- (4) In making a determination under subsection (3), the Minister must have regard to the following:
- (a) the period or periods of attendance by the person at the school, or at school generally, during the year;
 - (b) the pattern of attendance by the person at the school, or at school generally, during the year;
 - (c) whether the person is or will be included in the census day enrolment of another school for the year;
 - (d) for any period of non-attendance by the person—the steps taken by the school to engage the person in the relevant level of education;
 - (e) any other matter the Minister considers relevant.
- (5) A determination under subsection (3) may be made:
- (a) on the Minister's own initiative; or
 - (b) on application by the approved authority for the school.

Note: For rules relating to applications, see Division 2 of Part 9 of the Act.

- (6) An application by an approved authority for a school for a determination under subsection (3) that relates to a year must be made within:

-
- (a) 14 days of the school's census day for the year; or
 - (b) if the Minister allows a longer period (whether before or after the period referred to in paragraph (a))—that longer period.
- (7) For the purposes of subsection 118(2) of the Act, a determination under subsection (3) is a reviewable decision, and the relevant person for the reviewable decision is the approved authority for the school concerned.

9B Meaning of *census day*

- (1) The *census day* for a school for a year is the day determined in writing by the Minister.

Determining the census day

- (2) The Minister may determine, in writing, that a particular day in a year is the school's census day for the year.
- (3) The Minister must not determine a day to be a school's census day for a year less than 5 weeks before the day unless the Minister is satisfied that special circumstances justify determining that day. If the Minister is so satisfied, the Minister may determine any day, including a past day.

Notifying census day

- (4) The Minister must:
- (a) notify the approved authority for a school of the school's census day for a year; and
 - (b) do so in a way that makes it reasonably likely the approved authority will become aware of the census day.

Example: A census day could be published on a website that the approved authority is likely to access regularly.

- (5) The notification must be given at least 5 weeks before the census day. If the Minister determines a day under subsection (3) because of special circumstances, the notification must be given as soon as practicable.

9C Meaning of *census reference period*

The *census reference period* for a school for a year is the period of 20 school days for the school that ends at the end of the census day for the school for the year.

Note: A public holiday is not a school day.

19 Section 10 (heading)

Repeal the heading, substitute:

EXPOSURE DRAFT

Schedule 1 Amendments

10 Conditions of financial assistance—implementing national policy initiatives and agreements relating to school education

20 Subsection 10(1)

Omit “section 22 of the Act (whether or not the State or Territory is a participating State or Territory)”, substitute “subsection 22(1) of the Act”.

21 Subsection 10(2) (note)

Repeal the note.

22 Paragraph 10(5)(a)

Omit “*Aboriginal and Torres Strait Islander Education Action Plan 2010-2014*”, substitute “*National Aboriginal and Torres Strait Islander Education Strategy 2015*”.

23 Paragraph 10(5)(b)

Repeal the paragraph, substitute:

- (b) consult with Aboriginal and Torres Strait Islander communities in developing and implementing plans for school education reform.

24 Subsection 10(5) (note)

Repeal the note, substitute:

Note: In 2017, the *National Aboriginal and Torres Strait Islander Education Strategy 2015* was accessible at www.educationcouncil.edu.au.

25 Sections 12, 13 and 13A

Repeal the sections, substitute:

12 Pro-rating of recurrent funding

- (1) For the purposes of section 27 of the Act, the total entitlement is to be determined in accordance with this section for a year if one or more of the following events occurs during the year:
 - (a) a school begins to provide primary education or secondary education;
 - (b) a school becomes entitled to financial assistance under Part 3 of the Act;
 - (c) a school ceases to provide primary education or secondary education;
 - (d) a school ceases to be entitled to financial assistance under Part 3 of the Act.
- (2) The amount of financial assistance that is to be determined in relation to the school for the year is the lesser of:
 - (a) the amount the Minister considers appropriate; and
 - (b) the full amount of financial assistance.
- (3) In deciding an appropriate amount for the purposes of paragraph (2)(a), the Minister must have regard to the following:
 - (a) the proportion of the school year during which the school was providing education or was entitled to financial assistance under Part 3 of the Act;
 - (b) the time during the school year when school began or ceased to provide education or be entitled to financial assistance under Part 3 of the Act;
 - (c) in the case of a school that has ceased to provide education or be entitled to financial assistance under Part 3 of the Act—the amount of any financial

assistance that has already been paid for the school for the year in accordance with determinations under subsection 25(1) of the Act.

- (4) Subsection (3) does not limit the matters to which the Minister may have regard.

26 Section 15

Repeal the section.

27 Section 16 (heading)

Repeal the heading, substitute:

16 Definition of *Aboriginal and Torres Strait Islander student*

28 Subsection 16(1)

Omit “(1)”.

29 Subsection 16(2)

Repeal the subsection.

30 Section 17

Repeal the section, substitute:

17 Disability loading—disability loading percentages

- (1) For the purposes of subsection 36(5) of the Act, this section sets out disability loading percentages.

Supplementary disability loading percentage

- (2) The supplementary disability loading percentage is:
- (a) for a primary school—42%; and
 - (b) for a secondary school—33%.

Substantial disability loading percentage

- (3) The substantial disability loading percentage is:
- (a) for a primary school—146%; and
 - (b) for a secondary school—116%.

Extensive disability loading percentage

- (4) The extensive disability loading percentage is:
- (a) for a primary school—312%; and
 - (b) for a secondary school—248%.

17A Disability loading—levels of adjustment

For the purposes of subsection 36(6) of the Act, a student needs a supplementary level of adjustment, a substantial level of adjustment or an extensive level of adjustment for a year if the student is classified as needing that level of

EXPOSURE DRAFT

Schedule 1 Amendments

adjustment in accordance with the Ministerial Council disability guidelines for the year.

31 Subsection 18(1) (heading)

Repeal the heading, substitute:

Socio-educational disadvantage loading—students in quartile 1

32 Subsection 18(2) (heading)

Repeal the heading, substitute:

Socio-educational disadvantage loading—students in quartile 2

33 Subsection 18(4) (note at the end of the definition of *total ACARA students for the school for the year*)

Omit “sections 16 and 17”, substitute “section 16”.

34 Subdivision A of Division 2 of Part 3

Repeal the Subdivision.

35 Subdivision B of Division 2 of Part 3 (heading)

Repeal the heading.

36 Subsection 21(1)

Omit “receives distance education”, substitute “is a distance education student”.

37 At the end of section 24A

Add:

; and (c) for 2017, 101.92%.

38 Section 24B

Omit “paragraphs 68(4)(a) and (b)”, substitute “paragraph 68(4)(a)”.

39 Division 3 of Part 4

Repeal the Division, substitute:

Division 3—Funding in prescribed circumstances

25A Funding in prescribed circumstances

Schedule 1 has effect.

Note: Schedule 1 deals with financial assistance payable under sections 69A and 69B of the Act.

40 Subsection 31(1)

Omit all the words after “Part 5 of”, substitute:

the Act (funding for non-government representative bodies):

(a) for the purpose of supporting school education; and

- (b) in accordance with an arrangement between the non-government representative body and the Minister relating to the use of the financial assistance.

41 Subsections 31(2) and (3)

Repeal the subsection, substitute:

- (2) The financial assistance must be spent, or committed to be spent:
 - (a) in the year in which the financial assistance is paid to the non-government representative body; or
 - (b) if the Minister makes a determination under subsection (3)—before the day, or within the period, specified in the determination.
- (3) The Minister may determine, in writing, a day before, or a period within which, the non-government representative body must spend, or commit to spend, the financial assistance.

42 Subparagraph 34(2)(a)(ii)

Repeal the paragraph, substitute:

- (ii) an independent third party agreed to by the Minister; or

43 Subparagraph 34(3)(a)(i)

Omit “25D, 25G, 25L, 29, 30 or 31”, substitute “29, 30 or 31 or a specified provision of Schedule 1”.

44 Subparagraph 34(3)(a)(iii)

Omit “25D(6), 25L(5), 29(8) or 31(4)”, substitute “29(8) or 31(4) or a specified provision of Schedule 1”.

45 Paragraph 35(1)(ba)

Omit “section 25H”, substitute “a specified provision of Schedule 1”.

46 Paragraph 35(1)(c)

Omit “participating government”.

47 Paragraph 35(1)(d)

Repeal the paragraph.

48 Subsection 35(1) (note)

Omit “section 61 of this regulation and paragraph 78(3)(a)”, substitute “subsection 78(3)”.

49 Paragraph 35(2)(b)

Repeal the paragraph substitute:

- (b) an independent third party agreed to by the Minister.

50 Paragraph 36(1)(fa)

Omit “section 25A or 25H”, substitute “a specified provision of Schedule 1”.

EXPOSURE DRAFT

Schedule 1 Amendments

51 Subsection 36(1) (note)

Omit “section 61 of this regulation and paragraph 78(3)(a)”, substitute “subsection 78(3)”.

52 After section 39

Insert:

39A Requirement to provide information and records

- (1) An approved authority, block grant authority or non-government representative body for a school must provide the Minister or an authorised person with any information or records requested by the Minister or authorised person that relate to the following:
 - (a) the authority or body’s compliance with the Act and this regulation;
 - (b) for an authority or body for a non-government school—the financial administration of the authority or body;
 - (c) for an approved authority for a non-government school—the financial administration of the school.
- (2) The information or records must be presented in the manner, and on the day, specified by the Minister or the authorised person.
- (3) The Minister or the authorised person may take extracts from, or make copies of, the information or records.

53 Subdivision A of Division 3 of Part 5

Repeal the Subdivision.

54 Subsection 43(3)

Repeal the subsection, substitute:

- (3) An approved authority for a school must provide to ACARA the following information about each student at the school who undertakes an assessment mentioned in items 1 to 6 of the table in subsection (1):
 - (a) the student’s result in the assessment;
 - (b) the information specified in:
 - (i) the Data Standards Manual: Student Background Characteristics; and
 - (ii) for an assessment mentioned in items 1 and 2 of that table—the NAPLAN Online Data Extract Dictionary;
 - (c) any other information determined by the Minister.
- (3A) The information mentioned in subsection (3) must be provided to ACARA:
 - (a) no later than the day or days determined by the Minister; and
 - (b) in a way or ways (if any) determined by the Minister.

55 Subsection 48(1)

Omit “receiving primary education or secondary education at government schools on the schools’ census day”, substitute “included in government schools’ census day enrolments”.

56 Paragraph 48(1)(b)(iii)

Repeal the paragraph, substitute:
(iii) distance education students.

57 Subsection 48(1) (note)

Repeal the note.

58 Subsection 48(2)

Omit “receiving primary education or secondary education at government schools on the schools’ census day”, substitute “included in government schools’ census day enrolments”.

59 Subsection 50(1)

Omit “receiving primary education or secondary education at a non-government school on the school’s census day”, substitute “included in non-government school’s census day enrolment”.

60 Subsection 50(1) (note)

Repeal the note.

61 Subsection 50(2)

Omit “receiving primary education or secondary education at a non-government school on the school’s census day”, substitute “included in non-government school’s census day enrolment”.

62 Subsection 58A(1)

Omit all the words after “in relation to each student”, substitute “with disability at the school”.

63 Subsection 58A(1) (note)

Repeal the note.

64 Subsection 58A(4) (definition of *disability*)

Repeal the definition.

65 Subdivision I of Division 3 of Part 5

Repeal the Subdivision.

66 Section 65 (heading)

Repeal the heading, substitute:

65 Using or disclosing school education information

67 Subsection 65(1)

Omit “make a record of, use or disclose protected”, substitute “use or disclose school education”.

EXPOSURE DRAFT

Schedule 1 Amendments

68 Subsection 65(2)

Omit “protected”, substitute “school education”.

69 Subsection 65(4)

Omit “protected”, substitute “school education”.

70 After section 65

Insert:

65A Annual report by Minister

For the purposes of paragraph 127(d) of the Act, beginning in 2019, the report must deal with the following:

- (a) information about the Commonwealth share for the previous year;
- (b) information about SES scores for the previous year;
- (c) the total amount of financial assistance payable under Division 2 of Part 3 of the Act for the schools of each approved authority for the previous year;
- (d) the total amount of financial assistance payable under Division 3 of Part 5 of the Act for the schools of each approved authority for the previous year;
- (e) the average per student amount of the total of the amounts mentioned in paragraphs (c) and (d).

71 Paragraph 66(1)(b)

Repeal the paragraph.

72 Subsection 66(2) (note)

Repeal the note.

73 Subsection 66(4) (note)

Repeal the note.

74 Subsection 68(10) (heading)

Repeal the heading, substitute:

School education information

75 Subsection 68(10)

Omit “protected”, substitute “school education”.

76 At the end of the regulations

Add:

71 Application provision for the Australian Education Amendment (2017 Measures No. 1) Regulations 2017

Despite the repeal of Subdivision C of Division 3 of Part 4 of these regulations as in force immediately before the commencement of this section, the Subdivision continues to have effect for the purposes of determinations by the Minister under section 69A of the Act in relation to 2016 or 2017.

Schedule 1—Funding in prescribed circumstances

Note: See section 25A.

Part 1—Transition adjustment funding for Northern Territory government schools

1 Circumstances

- (1) For the purposes of subsection 69B(1) of the Act, the circumstances for a school for a relevant transition year are:
 - (a) the school is a government school located in the Northern Territory; and
 - (b) the approved authority for the school has entered into an arrangement with the Minister relating to the use of financial assistance payable under subsection 69B(1) of the Act.
- (2) In this Part:

relevant transition year means any of the years from 2018 to 2021 (inclusive).

2 Amounts payable

Total amount of funding for relevant transition years

For the purposes of paragraph 69B(4)(a) of the Act, the total of the amounts determined by the Minister for relevant transition years, taken together, in relation to the circumstances mentioned in clause 1, is \$35.581 million.

3 Purpose for which funding is spent or committed to be spent

- (1) For the purposes of paragraph 78(2)(a) of the Act, an approved authority for a school must spend, or commit to spend, financial assistance that is payable for the school under subsection 69B(1) of the Act in the circumstances mentioned in clause 1:
 - (a) for the purpose of supporting school education; and
 - (b) in accordance with the arrangement mentioned in paragraph 1(1)(b).
- (2) Financial assistance mentioned in subclause (1) must be spent, or committed to be spent:
 - (a) in the year in which the financial assistance is paid to the approved authority; or
 - (b) as otherwise directed by the Minister.
- (3) For the purposes of paragraph (2)(b) of this clause, the Minister may give written directions to an approved authority.
- (4) Any interest earned on financial assistance mentioned in subclause (1) must be spent, or committed to be spent, in the same way as the financial assistance.

EXPOSURE DRAFT

Part 2—Transition adjustment funding for non-government schools

4 Circumstances

- (1) For the purposes of subsection 69B(1) of the Act, the circumstances for a school for a transition year are:
- (a) the school is either:
 - (i) a school specified in column 1 of an item in the table in subclause (3); or
 - (ii) a non-government school; and
 - (b) the per-student amount for the school for the transition year is less than the per-student amount for the school for 2017.

- (2) In this Part:

2017 recurrent funding for an approved authority means the amount worked out under subsection 35B(3) of the Act for the approved authority.

per-student amount, for a school for a year, means:

- (a) for 2017:
 - (i) if the school is specified in column 1 of an item in the table in subclause (3)—the amount specified in column 2 of the item; or
 - (ii) otherwise—the 2017 recurrent funding for the school’s approved authority divided by the number of students at the schools of the approved authority for 2017; or
- (b) for a later year—the sum of the amounts payable under section 32 of the Act for the schools of the approved authority for the year divided by the number of students at the schools of the approved authority for the year.

- (3) The following table sets out per-student amounts for specified schools for 2017.

Per-student amounts for specified schools for 2017		
Item	School	Amount
1		
2		
3		
4		
5		
6		
7		

5 Amounts payable

Total amount of funding for the transition years

- (1) For the purposes of paragraph 69B(4)(a) of the Act, the total of the amounts determined by the Minister for the transition years, taken together, in relation to the circumstances mentioned in clause 4, is [...] million.

Maximum amount of funding for a particular school for a year

- (2) For the purposes of paragraph 69B(2)(b) of the Act, the total of the amounts determined by the Minister for a school for a transition year, in relation to the circumstances mentioned in clause 4, must not exceed the difference between the per-student amount for the school for the transition year and the per-student amount for the school for 2017 multiplied by the number of students at the school for the transition year.

6 Matters that Minister may have regard to

For the purposes of paragraph 130(2)(b) of the Act, in making a decision under subsection 69B(1) of the Act about the amount of financial assistance that is payable for a school for a transition year in the circumstances mentioned in clause 4, the Minister may have regard to the Guidelines for Adjustment Assistance for Non-Government Schools, as in force from time to time.

7 Purpose for which funding is spent or committed to be spent

- (1) For the purposes of paragraph 78(2)(a) of the Act, an approved authority for a school must spend, or commit to spend, financial assistance that is payable for the school under subsection 69B(1) of the Act in the circumstances mentioned in clause 4:
 - (a) for the purpose of providing school education; and
 - (b) in accordance with any directions given by the Minister.
- (2) Subsections 29(2) and (3) of this instrument have effect as if a reference in those subsections to subsection (1) included a reference to subclause (1).
- (3) Financial assistance mentioned in subclause (1) must be spent, or committed to be spent:
 - (a) in the year in which the financial assistance is paid to the approved authority; or
 - (b) as otherwise directed in writing by the Minister.
- (4) For the purposes of paragraphs (1)(b) and (3)(b) of this clause, the Minister may give written directions to an approved authority.
- (5) Any interest earned on financial assistance mentioned in subclause (1) must be spent, or committed to be spent, in the same way as the financial assistance.

Schedule 2—Levels of education for schools in South Australia

Note: See subsections 7(2) and 8(2).

EXPOSURE DRAFT

Schedule 1 Amendments

1 Levels of education for schools in South Australia

For a school specified in column 1 of an item in the following table:

- (a) the levels of education that constitute primary education are set out in column 2 of the item; and
- (b) the levels of education that constitute secondary education are set out in column 3 of the item.

Levels of education for schools in South Australia			
Item	Column1	Column 2	Column 3
	School	Primary education	Secondary education
1			
2			
3			
4			
5			
6			
7			



SENATOR THE HON MITCH FIFIELD
MINISTER FOR COMMUNICATIONS
MINISTER FOR THE ARTS
MANAGER OF GOVERNMENT BUSINESS IN THE SENATE

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
S1.111
Parliament House
CANBERRA ACT 2600

**Standing Committee for the Scrutiny of Bills - Commercial
Broadcasting (Tax) Bill 2017**

Dear Senator Polley

Thank you for your letter on behalf of the Standing Committee for the Scrutiny of Bills dated 22 June 2017 concerning the use of delegated legislation in respect of several matters relating to the proposed transmitter licence tax in the Commercial Broadcasting (Tax) Bill 2017 (the Bill). Specifically, I understand the Committee has sought advice on whether parliamentary scrutiny of the delegated legislation can be increased, and the reasons for reversing the usual disallowance procedures in relation to the delegated ministerial determination.

I wish to assure the Committee that the overriding objective underpinning the design of the proposed new ministerial power under proposed clause 8(2) of the Bill to determine individual transmitter amounts has been to maximise parliamentary scrutiny whilst maintaining a sufficient degree of flexibility. While the Bill would enable the ministerial determination to set out different rates, he or she must do so for different classes of transmitter, licence or licence-holder and the delegated power to set the rate of the tax is constrained by subclause 8(6) and clause 9, which impose a legislatively-prescribed 'cap' on the rates.

I also note that clause 13 of the Bill provides for a modified disallowance procedure in respect of a Ministerial determination setting the tax amounts for individual transmitters. This modified disallowance procedure provides enhanced Parliamentary scrutiny over any such Ministerial determination than would be available under the usual disallowance procedure in section 42 of the *Legislation Act 2003* (Legislation Act). Under the usual disallowance procedure, a legislative instrument will take effect from when it is made and commences, and if disallowed, will only cease to have effect from the time of disallowance. Under the modified procedure in the Bill, a ministerial determination can only commence and take effect once the disallowance period has passed and the Parliament has had sufficient time to scrutinise the determination.

Finally, I note section 14 of the Bill provides for the Minister to make rules for the provision of rebates for whole or part of an amount of tax payable by a person. This is a common provision providing for rebates for tax amounts, and is subject to the usual disallowance procedure set out in section 42 of the Legislation Act.



The Hon Dan Tehan MP
Minister for Veterans' Affairs
Minister for Defence Personnel
Minister Assisting the Prime Minister for Cyber Security
Minister Assisting the Prime Minister for the Centenary of ANZAC

Parliament House
CANBERRA ACT 2600

Telephone: 02 6277 7820

MC17-002097

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
Parliament House
CANBERRA ACT 2600

Dear Senator Polley

A handwritten signature in blue ink that reads 'Helen,' with a blue checkmark to its left.

Thank you for your letter of 15 June 2017 seeking further advice about the *Defence Legislation Amendment (2017 Measures No. 1) Bill 2017* (the Bill).

The Committee is seeking my response to its suggestion that the current Bill before Parliament be amended to include a legislative requirement to conduct a review into the desirability of, and potential options for, moving the complaints and mediation scheme from the *Defence Reserve Service (Protection) Regulations 2001* (the Regulations) to the *Defence Reserve Service (Protection) Act 2001* (the Act).

I fully understand the Committee's concerns regarding the continued inclusion of significant matters such as complaints and mediation processes in the Regulations, rather than the Act.

I have asked the Department of Defence to immediately take steps to prepare a legislation bid for the Autumn 2018 sitting period for this measure to be included in the Government's legislation programme. This proposed bid will seek to move the complaints and mediation scheme from the Regulations into the Act, as suggested by the Committee. This will be a separate process from the usual sunset review process, and is likely to occur well before the sunset date of the Regulations on 1 October 2019.

Further delay is undesirable from a policy perspective, given the protective purpose of the measure for Reserve members, as well as the other measures in the Bill. I believe my above undertaking sufficiently acknowledges and should alleviate the Committee's concerns regarding the complaints and mediation scheme, without making amendment to the current Bill.


I appreciate you bringing this matter to my attention. I trust this information is of assistance to you.



SENATOR THE HON MATHIAS CORMANN
Minister for Finance
Deputy Leader of the Government in the Senate

REF: MS17-001442

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
Parliament House
Canberra ACT 2600


Dear Senator Polley

I refer to the letter dated 10 August 2017 from the Committee Secretary to the Senate Standing Committee for the Scrutiny of Bills (the Committee) sent to my office seeking further information in relation to the *Public Governance and Resources Legislation Amendment Bill (No. 1) 2017* (the Bill).

In *Scrutiny Digest No. 8 of 2017*, the Committee sought my advice as to why it is considered necessary to authorise the making of retrospective legislative instruments in this instance, including examples of circumstances where such a power may be used, whether any persons are likely to be adversely affected and the extent to which their interests are likely to be affected.

Item 4 of Schedule 4 to the Bill is a facilitative provision that reflects good law making and its intent to support the seamless application of the law.

It is considered necessary in this instance to ensure that, where a need is recognised, any legislative instrument, including amendments to a legislative instrument that is consequential on the enactment of the Bill, may commence on a day before the legislative instrument is registered, including the date of the commencement of the Bill.

For example, I am currently in the process of drafting a legislative instrument that would repeal the National Competition Council, the Australian Building and Construction Commission and the Australian Transaction Reports and Analysis Centre from Schedule 1 to the *Public Governance, Performance and Accountability Rule 2014*. The instrument would rely on item 4 of Schedule 4 in taking effect from a date before it is registered, that is at the commencement of Bill. This would support the seamless application of the law.

The inclusion of item 4 of Schedule 4 to the Bill reflects past practice of including similar provisions within *Public Governance, Performance and Accountability Act 2013* related legislation. For example, the following two Acts include similar provisions:


- Item 5 of Schedule 14 to the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014*; and
- Item 1 of Schedule 7 to the *Public Governance and Resources Legislation Amendment Act (No. 1) 2015*.

No amendments have been made in reliance on either of the two above provisions as a consequence of the enactment of those Acts.

In light of the administrative nature of the amendments in the Bill and their relevance only to Commonwealth entities, any amendment to a legislative instrument made as a consequence to the enactment of the Bill is unlikely to result in any adverse effects on any individual other than the Commonwealth.

I trust this information supports the Committee in finalising its consideration of the Bill.

Thank you for bringing the Committee's comments to the attention of the Government.

 Mathias Cormann
Minister for Finance

19 August 2017