



**SUBMISSION TO**

**SENATE EDUCATION, EMPLOYMENT AND  
WORKPLACE RELATIONS COMMITTEE**

***AUSTRALIAN EDUCATION BILL 2013 (as amended)***  
***AUSTRALIAN EDUCATION (CONSEQUENTIAL AND  
TRANSITIONAL PROVISIONS) BILL 2013***

**JUNE 2013**

## INTRODUCTION

Independent Schools Queensland (ISQ) represents the interests of Queensland's independent schools. ISQ currently represents some 187 independent schools in Queensland enrolling approximately 115,000 students.

ISQ welcomes the opportunity, on behalf of its members, to make this submission to the Senate Education, Employment and Workplace Relations Committee's Inquiry into the provisions of the *Australian Education Bill 2013 (as amended) and the Australian Education (Consequential and Transitional Provisions) Bill 2013*.

ISQ is a member association of the Independent Schools Council of Australia (ISCA). ISCA has made a submission to this Inquiry. The submission by ISCA is made on behalf of its member associations. ISQ strongly endorses the ISCA submission to the Senate Committee on the Bill.

## BACKGROUND

This submission is made in the context of the Senate's referral of the Bills to the Committee on 18<sup>th</sup> June 2013, the invitation to make submissions with a closing date of 21<sup>st</sup> June 2013 and the decision of the Committee to report to the Senate on 24<sup>th</sup> June 2013.

The process for public comment on the Bills is of concern. The timeline for examination of these Bills effectively limits the ability of organisations such as ISQ from contributing to the public policy and legislative processes of the Australian Parliament. It is doubtful that in the time provided the Committee could properly consider the Bills or any submissions made to it in relation to the Bills.

Further, ISQ expresses its disappointment with the process given the significance of the Bills. The Australian Education Bill could be considered the most significant piece of legislation in relation to Australian schooling in the history of the Australian Parliament. Yet the Committee will take just two days to consider submissions by the public and key stakeholders. The Australian Education Bill amendments were introduced and passed by the House of Representatives in two days with the public not given any opportunity to make submissions.

**We recommend that the Committee properly examine the Bills, conduct public hearings to ensure proper consideration of the Bills and that the original reporting date of 20th August be reinstated and confirmed.**

## COMMENTS ON THE PROVISIONS OF THE BILLS

Although it is difficult to understand, given the short timeframe, how the Committee will give proper consideration to issues raised in public submissions, ISQ provides at Attachment 1 a list of issues that it considers should be examined by the Committee in relation to the Australian Education Bill. The issues are of concern to ISQ and its member schools.

## NO SCHOOL WORSE OFF

Of critical importance to all schools is the commitment of the Australian Government that no school will be worse off as a result of the implementation of the National Plan for School Improvement. This commitment has been stated many times over the past three years by the Australian Government. Given this commitment, it would be expected that the Australian Education Bill 2013 would clearly articulate the arrangements whereby no school will be worse off.

No such assurance appears to be given by the provisions of the Bill.

The Bill provides for the School Resources Index to be indexed annually at a rate of 3.6% from 2014. This appears to be the Australian Government's estimate of the increased costs that will face schools on an annual basis.

It would therefore be expected the legislation would provide for a minimum indexation of 3.6% of public funding to schools. Without indexation at this level, schools will be clearly worse off in real terms.

The Bill provides for a minimum indexation of 3% for certain schools. Indexation at this level, compared to increased SRS at 3.6% will result in those schools being worse-off in real terms.

**We recommend that the Bill provide for a minimum rate of indexation of public funding for schools of 3.6%.**

## POSITION OF STATES/TERRITORIES

ISQ is concerned that this legislation is being dealt with prior to the support of all States/Territories being gained for the National Plan for School Improvement.

Such an important piece of legislation should not be considered by the Federal Parliament without the support of all States and Territories. States/territories are responsible for the provision of school education and the National Plan for School Improvement should have the support of all States/Territories prior to being enshrined in federal legislation.

**We recommend that further consideration of the Bills should occur after all States and Territories have agreed to the National Plan for School Improvement.**

**Independent Schools Queensland  
21<sup>st</sup> June 2013**

# ATTACHMENT 1

## Comments and observations on the Australian Education Bill 2013

### Preamble and Objects

A needs-based funding model “applied consistently across all schools”

This is clearly not the case – there are different arrangements for government and non-government schools, in addition to different arrangements for “systemic” schools and independent schools.

### Division 2 - Definitions

New concepts of “high quality” and “highly equitable” as used in the Preamble – highly equitable is defined but “high quality” is not. The definition of highly equitable is a very narrow definition using PISA only as the benchmark.

Participating school and non-participating school – only government schools can be non-participating. Minister determines that a State is a participating State – Section 14. Non-government schools have no choice as to whether to be participating schools or not. Given the resource commitments for participating schools in terms of implementing the requirements of the Act (re school improvement), this is unfair.

It might be appropriate as a condition of Commonwealth funding (but is questionable in terms of transition schools), but schools use their Commonwealth and State funding as the resource base. It would be ideal if the legislation recognised that participating schools will need resources from the Commonwealth and State to implement the requirements of the Act. For independent schools, there is no guarantee of increased resources from the State (in the case where a State is not participating in NPSI).

Further, it is not logical or fair that some schools might be participating and others not. If the reforms are in the best interests of Australian education, they should be implemented in all schools.

Implementation plan - this is only required for approved authorities with more than one school (see Division 4 Part 7). It is understood that the implementation plan will need to set out the methodology for allocating funds across schools and that the methodology is consistent with the Gonski model. Whilst appreciating the concerns of State governments and systems that this is excessive centralised control of system responsibilities, there is an argument that if the Gonski

model is an appropriate education funding model, there should not be a need for redistribution of funding. It points to perhaps the Gonski model not being totally ideal.

Capital grants authorities – Section 66 (Guide) appears to make a block grant authority for a non-government school and a capital grants authority for a non-government school one and the same. This is confusing and clarification is needed as to the role and purpose of capital grant authorities.

Section 7 – Census day – Minister can vary the census day for a school – whilst this could be a positive provision, clarification is needed as to the intent of this Ministerial power.

Section 7 – (6) (b) (i) – the person attends the school on a daily basis – this seems very restrictive and could exclude part time students.

Section 19 – excludes distance education students from the Act where distance education only is provided. This is unfair and inequitable. Further clarification is required in relation to the policy intent of this provision.

## **Part 2 – Grants of financial assistance**

The Act provides for recurrent funding, capital funding, special circumstances funding (previously short term emergency assistance) and funding for non-government representative bodies

Conditions on States for funds paid for non-government schools – they must pay the funds to the approved authority; describe the payment as from the Commonwealth; and make the payment as soon as practicable.

The State is responsible for recovery of overpayment for a non-government school (including capital). Clarification is needed as to where the legal liability rests in terms of this provision.

The Bill appears to give the Minister the power to determine when capital funding is paid to a block grant authority. It also gives the Minister the power to determine timing and amount of funding for non-government representative bodies. Whilst generally not unreasonable, it is another example of various matters in the Act where the Minister appears to have an almost discretionary power about funding.

## **Division 3 – Loadings**

The student with disability loading percentage is to be prescribed in regulations, yet all other loading percentages are prescribed in the Act. There should be consistency about where the loadings details appear.

The provisions in relation to the calculation of the loadings are very complex – schools won't understand them and it will be difficult for anyone to actually calculate the loadings by referring to the legislation.

## **Division 4**

Capacity to Contribute – an explanation is required as to the two different ways the Minister can determine an SES score – by legislative instrument – section 49 (2) or by administrative decision – section 49 (3).

## **Division 5 – Transition arrangements**

The legislation is complex – see comment above about the legislation for calculation of loadings.

## **Part 5 – Capital, Special Circumstances and Funding for non-government representative bodies**

The Guide to Part 5 states capital funding is paid either to a capital grants authority or a block grant authority. A school's capital grants authority is its approved authority, but if the school has a block grant authority, the block grant authority is also the capital grants authority. For a non-government school, the State's approved authority is also the school's capital grants authority.

It also refers to a capital grants authority that is also a block grant authority.

This is all very confusing – clarification is required about capital grants authorities – does this mean an individual non-government school (or a group of schools) cannot participate in a BGA but have its capital funding paid direct to it as a capital grants authority?

There are no amounts prescribed or indexation arrangements for funding for non-government representative bodies.

Minister has power to determine funding for non-government representative bodies – but regulations may prescribe matters the Minister may or must have regard to in making a decision.

Determination of funding amounts for non-government representative bodies are not reviewable decisions nor are they legislative instruments. Therefore, there is no appeals mechanism or ability to seek a review.

## **Part 6 – Approved authorities**

Section 74 – a public interest test applies for approved authorities – public interest is not defined – decision rests with Minister. This is another example of the Minister's decision making power under the Act, some of which will be discretionary.

It is not clear from the legislation as to whether an approved authority can operate schools in more than one State. This needs to be clarified.

There is potential confusion between what is an approved authority for State accreditation purposes and what is an approved authority for Commonwealth funding purposes. Clearly these can be different. It would be preferable for there to be consistency between the two. State accreditation/registration requirements should be included in the regulation as something the Minister must consider when approving approved authorities.

Section 77 – Ongoing policy requirements for all approved authorities - (3) (c) information for the purposes of conducting research on schools and school education; this requirement is new. ISQ is concerned at how this requirement will be expressed in the regulations. It will be important for independent schools to retain their autonomy regarding participation in research and their discretion regarding whether research findings in respect of their schools are made publicly available.

This requirement also has implications for schools in respect of privacy provisions, informed consent, data collection notices and ownership of data. Independent schools would need to be reassured

that these provisions had been considered and that data protocols regarding the need for de-identified data and controls around data linkages were in place.

## **Part 9 - Miscellaneous**

### **Division 3 – Review of decisions**

Item 2 – Reviewable decision – to determine a total entitlement for a school for a year if the amount of financial assistance to which the determination relates is payable under Division 2 of Part 3. ISQ understands that this reviewable decision will only apply once a school has completed its transition to the model. During the transition period, a school’s funding amount will be determined by the Minister and this will be a non-appealable decision.

ISQ has continuously sought, and been assured that the legislation would provide for schools to be able to appeal any aspect of their funding entitlement, including from the initial transitional phase of the new funding arrangements. Indeed, ISQ anticipates that it is during this transition phase that the requirement for schools to be able to appeal their funding outcomes will be the most critical.

### **General Comments**

The Bill is very complex and difficult to follow. It appears to place a large range of provisions which were previously either enacted by regulation or agreements into the Act itself.

There are still a large number of matters prescribed by regulation. A draft of the regulations would be required in order to make a complete assessment of the legislation.

The Bill enshrines into Commonwealth law significant matters in relation to schools funding and the conditions of such funding. Whilst independent schools are familiar with the Commonwealth placing conditions on its funding, the proposed Bill appears to take this further in terms of prescription.

It also effectively makes Commonwealth matters a condition of State funding which is significantly different from the existing arrangements.