



Australian Government
Department of Education,
Skills and Employment

Senate Committee on Education and Employment: Australian Education Amendment (Direct Measure of Income) Bill 2020

Submission by the Department of Education, Skills
and Employment



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Introduction

The Department of Education, Skills and Employment welcomes the opportunity to make a submission to the Senate Education and Employment Legislative Committee inquiry into the Australian Education Amendment (Direct Measure of Income) Bill 2020 (the Bill).

The majority of amendments to the *Australian Education Act 2013* (the Act) enable the implementation of the Direct Measure of Income and associated changes for non-government school transition to the nationally consistent Commonwealth share of the Schooling Resource Standard (SRS). Overall, this Bill supports the longstanding agreement that funding of non-government schools is a shared responsibility between the parents and guardians of the students attending those schools, the Australian Government and the state and territory governments. Subsequently, the new methodology for calculating the capacity of parents and guardians to contribute (CTC) to non-government schooling will ensure Commonwealth funding is more targeted and fairer.

In addition to the new direct measure of income, the Bill clarifies the Commonwealth's ability to make GST-inclusive payments under the Act where the recipients of those payments incur GST liabilities, in line with long-standing practice.

The Bill also expands the circumstances in which a school may be regarded as a 'majority Aboriginal and Torres Strait Islander school' under the Act and enables the Minister to make a determination that a school is likely to be a majority Aboriginal and Torres Strait Islander school for the year to avoid any unintended application of the capacity to contribute methodology. This has the potential to further enhance the right to education as it means more schools may be eligible to receive a CTC percentage of zero. Having access to this is beneficial as it means the base amount of recurrent funding is not discounted by an amount to reflect the capacity of the school community to contribute financially to the school.

Why are most amendments regarding the Direct Measure of Income in Regulation and not the Bill?

The new direct measure of income only affects eligible non-government schools (i.e non-government schools that are not exempt under subsection 52(6) of the Act). As CTC scores are not calculated for government schools, the Bill makes amendments to distinguish between transitioning government schools and transitioning non-government schools. Transitioning government schools are unaffected by the direct measure of income and will continue to be subject to section 35B in the Act. Transitioning non-government schools are instead proposed to be subject to a new section 35C in the Act. Both sections 35B and 35C will provide for the Commonwealth share for schools transitioning to the nationally consistent share.

The new section 35C will refer to the Australian Education Regulation 2013 (the Regulation) for the methodology of a non-government school's transition path.

The changes to the Regulation to be made for this purpose will be time-limited in nature with starting Commonwealth shares to be reset in 2020, 2021 and again in 2022, and all non-government schools expected to transition to the consistent Commonwealth share by 2029.

Through enabling the Regulation to detail the methodology applying to the transition period only, complexity in the Act is kept to a minimum, with the focus of the Act instead being on the longer-term funding arrangements for government and non-government schools. This approach will also enable refinements to the methodology to be implemented as new data becomes available.

The amending Regulations to prescribe the manner in which the Commonwealth share will be worked out for non-government schools during the transition period will be subject to review through both consultation on the draft (including with states and territories).

The Australia Government has provided the proposed changes to the Regulations to state and territory governments and engaged with the non-government school sector as part of its consultation on the implementation of the new measure. The Government will continue to engage with schools on the implementation of the new direct measure of income.

GST Payments under the Australian Education Act

The purpose of the new section is to provide clear authority for the Commonwealth to make payments of GST-inclusive amounts of funding under the Act in circumstances where the recipient is liable to pay GST on the funding. It follows a recent ruling from the Australian Taxation Office in regard to GST liability that necessitates a change in the legislation as soon as practicable to ensure payments can continue to be made to non-government schools.

Australian Government funding for non-government schools has been GST-inclusive since the GST was introduced in 2000. Schools funding has been provided under five different Acts during that time:

- *States Grants (Primary and Secondary Education Assistance) Act 1996* (1997-2000);
- *States Grants (Primary and Secondary Education Assistance) Act 2000* (2001-2004);
- *Schools Assistance (Learning Together – Achievement through Choice and Opportunity) Act 2004* (2005-2008);
- *Schools Assistance Act 2008* (2009-2013);
- *Australian Education Act 2013* (2014 -).

The new provision will preserve these long-standing arrangements for the payment of GST-inclusive amounts. As the new provision simply preserves existing payment arrangements, it has no financial impact. New subsection 125A(1) will clarify that where an amount is payable in accordance with a determination under section 25, paragraph 28(1)(b) or 29(1)(aa) of the Act for an acquisition (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*), and an input tax credit or decreasing adjustment arises for that acquisition, then the amount payable is increased by an amount reflecting the input tax credit or decreasing adjustment relating to that acquisition.

Section 68 of the Act imposes an annual limit on capital funding, and most forms of prescribed circumstances funding set out in Schedule 1 to the Regulation are also capped. These funding limits

are “GST-exclusive”, and so subsection 125A(2) will ensure that the increase in payments due to subsection (1) are not taken into account for those purposes.

In addition, a number of subsections of section 9 of the Act provide that an overpayment for the purposes of the Act occurs when amounts paid for a school as a result of determinations under section 25, paragraph 28(1)(b) or 29(1)(aa) of the Act exceed the annual amounts calculated or determined under the Act. Those annual amounts are also “GST exclusive”, and so subsection 125A(3) will ensure that the increase in payments due to subsection (1) will not result in overpayments under section 9.

What is the Direct Measure of Income?

The Australian Government, through its *Quality Schools* reforms, is committed to Commonwealth school funding that is fair, transparent, equitable and needs-based so students with the same need in the same sector will attract the same level of support from the Commonwealth.

As the majority funder of non-government schools, the Government is committed to supporting parental choice and diversity in the schooling system. This means supporting the full breadth of the non-government sector through needs-based funding arrangements.

Since 2001, the socio-economic status (SES) score for a school was calculated every four years by matching the residential addresses of the school’s students with information collected as part of the Australian Bureau of Statistics (ABS) Census of Population and Housing (Census) data.

For most non-government schools, the base schooling resource standard amount is reduced by the anticipated capacity of their school community to financially contribute towards the school’s operating costs. This is called the ‘capacity to contribute’ assessment and it is based on the socio-economic status score of the school.

Socio-economic status scores provide a relative ranking of all non-government schools based on the income, education and occupation characteristics of the areas in which students at each school reside. This information is used to generate a number representing the socio-economic status of one student cohort relative to other cohorts, with 100 being the Australian ‘average’ socio-economic status score.

Following the National School Resourcing Board’s (the Board) review of the socio-economic status score in 2018, better whole of Government data has meant that information that is more accurate is available to calculate the actual capacity of parents and/or guardians at a school based on their median personal income taxation and other social security information. This will produce a much more reliable and targeted measure at the school as opposed to the existing area based methodology.

Consultation with stakeholders including the non-government sector and technical experts, considered whether the median income is a reliable measure for determining income distribution within a school. Analysis was undertaken with stakeholders to consider a range of alternative statistical measurements. On balance the Government decided to use the median as this was recommended by the Board as the most fit for purpose statistical measure for use in the direct

measure of income. Further, the use of the median expands the range of options available to reflect the circumstances of low income earners. Further information about the refinements to direct measure of income methodology considered in consultation with stakeholders is at **Appendix 1**.

Equitable Commonwealth funding for schools

State and territory governments have been responsible for delivering school education in their jurisdiction since Australia became a federation. This includes registering and regulating schools (whether government or non-government) and operating government schools. The Australian Government is growing its record levels of recurrent funding for schools from \$17.5 billion in 2017 to \$32.5 billion in 2029.

For the first time, Australian Government school funding will be truly needs based. Australian Government funding is based on the SRS, which provides a base amount for all students and additional funding (or loadings) to support disadvantaged schools and facilitate achievement of priority cohorts as recommended by Mr David Gonski AC's 2011 Review of Funding for Schooling. Students with the same need within the same sector will attract the same support from the Commonwealth, regardless of the state where they live. Students with greater needs will attract higher levels of funding from the Commonwealth.

The Commonwealth will contribute a consistent share of the SRS for each school. The Commonwealth's share will increase to 80 per cent of the SRS for non-government schools and 20 per cent for government schools by 2029.

The Bill makes no changes to arrangements for government schools. Funding for government schools will continue to grow by 4.8 per cent on a per student annual average over 2018 to 2029. This is higher than the growth for non-government schools. The Bill ensures that school funding will remain sector blind.

The Australian Government has a role in education funding and national policy. While the Commonwealth does not operate any schools or employ any teachers, funding responsibility is shared between the Australian Government and state and territory governments; and national education policy is decided by all governments working together through the Council of Australian Governments.

The capacity to contribute does not apply to government schools and non-government special schools and special assistance schools, non-government majority Aboriginal and Torres Strait Islander schools, and non-government sole provider schools. For all other schools, the capacity to contribute discount applies only to base amount; the loadings for disadvantaged schools and priority cohorts are not affected.

Implementation of the Direct Measure of Income

Implementation of the new arrangements will be phased in over three years from 2020 with all eligible schools on the direct measure of income in 2022.

The implementation of the new direct income measure will see the Government provide an estimated additional \$3.4 billion in funding for the non-government sector during the transition to the new arrangements from 2020 to 2029. The direct measure of income will use a three-year rolling average. This approach will reduce volatility for a school's CTC score in a given year, providing greater certainty for schools to financially plan.

As the new direct measure of income is a more accurate measure of capacity to contribute, there will be an impact to non-government schools. Three quarters of schools are better or no worse off under the new measure with funding continuing to grow for the majority of schools. There are 55 non-systemic independent schools where funding will reduce over time to 2029. The majority of these schools are located in major cities and had an average fee schedule of \$20,000 in 2017 (weighted by enrolments). Schools in regional and remote areas will continue to receive higher per student funding than metropolitan schools.

In recognition that systems are best placed to understand the needs of their schools, approved system authorities will continue to have the flexibility to distribute funding to individual schools according to their own needs-based funding arrangements that comply with section 78(5) of the Act.

Stakeholder consultation and the final settings for the Direct Measure of Income

Following the Board's review of the socio-economic status score final report, the Australian Government released its response to the Board's review on 20 September 2018. The Government accepted all the Board's recommendations and agreed to implement a direct measure of income from 2020. Implementation from 2020 was to support further consultation with the sector on potential impacts and possible refinements to the methodology.

In keeping with this commitment, the final settings for the direct measure of income were developed through extensive consultation over a 12-month period with non-government sector stakeholders including the Independent Schools Council of Australia, the National Catholic Education Commission, state and territory officials, small systems, parent and principal associations and other interested groups. These discussions highlighted different perspectives on the methodology, the importance of introducing change gradually, the need for additional support for parental choice, and the importance of a robust review process.

In addition the Department established the Direct Income Measure of Capacity to Contribute Technical Working Group in November 2018. This Technical Working Group provided advice on the statistical merits, strengths and weaknesses on technical issues related to the implementation of a new direct measure of income. The Technical Working Group focused on technical issues, including:

- consideration of the type of income to use and what to do when no income data is available
- how family size and circumstances, including multiple parental addresses, can be taken into account
- income distribution within individual schools, including small schools
- options to reduce volatility between years
- how regional, rural, remote and boarding schools can be taken into account

- how distance education can be taken into account
- methodology for constructing a rolling average
- safeguarding individual privacy
- developing solutions to overcome any identified anomalies

Supporting Schools in transitioning to the new funding arrangements

To assist schools with the transition to the direct measure of income, the Government has put in place a package of supports, including:

- Providing schools their most financially beneficial capacity to contribute settings for 2020 and 2021. Schools automatically receive the most beneficial of their 2011 or 2016 Census SES score or their new direct measure of income score.
- Assisting schools to gradually transition, schools will get an additional two years to 2029 if they are transitioning downwards to their share of the Schooling Resource Standard. Schools currently funded below their share will transition upwards by 2023.
- Assisting schools to transition to the direct measure of income and schools in regional and remote areas with an extra \$1.2 billion for non-government schools through the establishment of the Choice and Affordability Fund. A minimum of nine per cent of the funding under the Fund will be dedicated to assist regional schools as they transition to the direct measure of income. This funding will be administered through the state Non-Government Representative Body representing the school.
- In addition, the Government has undertaken to task the National School Resourcing Board to review the student loadings relating to funding for regional schools and students, including school size and location loadings.

The Department has worked in partnership with the Australian Bureau of Statistics (ABS) to develop the data quality and validation framework. The framework will be used annually to assess if data are fit for purpose, reliable and robust. Under this framework data, calculations and results will be assessed in line with the ABS's seven dimensions of quality – institutional environment, relevance, timeliness, accuracy, coherence, interpretability and accessibility.

The Department will continue to work with the ABS to explore the use of additional data sets that could further improve the quality of the CTC methodology. This will include an assessment of whether additional data can allow a school's CTC score to be calculated using a mean as opposed to the median parental income for the school.

The Australian Government is developing a review process so that schools who do not think the data reflects their circumstances will be able to seek a review of their score. More information on this work is at www.education.gov.au/what-capacity-contribute-appeals-process.

Privacy considerations

Parent and/or guardian information is private and protected by law, including the *Privacy Act 1988* (Cth). At no time will officials from the department or schools have access to identifiable income

data. In addition to the strictest safeguards, there are penalties including fines and imprisonment for any official that breaches the privacy of individuals.

The department will only be able to access de-identified data in the ABS secure DataLab through its personnel who have been seconded to the ABS to work on this data set under the Multi Agency Data Integration Project (MADIP). Department officers who have access to the DataLab are subject to the same rigorous security, privacy, and confidentiality requirements as ABS staff, including confidentiality requirements imposed by the *Census and Statistics Act 1905*. As part of the protections in place, access to customised MADIP datasets is only granted to people employed under the *Public Service Act 1999*.