

Overview of the Australian Education Bill 2012

Referral and conduct of the inquiry

- 1.1 On 29 November 2012, the House of Representatives Selection Committee referred the Australian Education Bill 2012 (the Bill) to the Standing Committee on Education and Employment for inquiry.
- 1.2 The Selection Committee's reason for the referral was:

To enable the committee to consult with school communities regarding the development and implementation of the National Plan for School Improvement.¹
- 1.3 The inquiry was advertised by media release, as well as directly inviting submissions from stakeholders. The Committee received 53 submissions and undertook public hearings in Canberra, Sydney, Brisbane and Melbourne throughout February and March. A list of submissions is included at Appendix A and a list of witnesses at Appendix B.
- 1.4 The Senate Standing Committee on Education, Employment and Workplace Relations also inquired into the Bill during this period. The Senate Committee presented its report on 13 March 2013, recommending the Bill be passed.
- 1.5 The focus of the Senate inquiry was different to that of this Committee. The Senate inquiry examined the provisions of the Bill 'against [the]

1 House of Representatives Selection Committee, *Report No. 73, Consideration of Bills*, 29 November 2012, p. 4.

national reform agenda and Council of Australian Government objectives'.²

Context of the Bill

- 1.6 The Bill forms part of the early legislative framework of the Government's response to the findings of the *Review of Funding for Schooling* chaired by Mr David Gonski AC (the Gonski Review).
- 1.7 The Gonski Review was undertaken as a response to the Australian schooling system's decline in international ranking over the last decade. In 2000, Australia was outperformed by only one country in reading and scientific literacy skills and by only two countries in mathematical literacy. In 2009 Australia was outperformed by six countries in reading and scientific literacy and by twelve countries in mathematical literacy.³
- 1.8 The Gonski Review was established to:
- develop a funding system for Australian schooling which is transparent, fair, financially sustainable and effective in promoting excellent outcomes for all Australian students.⁴
- 1.9 The Review found that current arrangements for the funding, accountability and transparency for schools did not support quality outcomes for all students. It also reported a growing disparity in educational outcomes for students from backgrounds associated with disadvantage, specifically:
- students with disability;
 - Aboriginal and Torres Strait Islander students;
 - students with limited English proficiency due to ethnic background or immigration circumstances;
 - students of low socioeconomic status; and
 - students in small or remote schools.⁵
- 1.10 To address these concerns, the Review presented a blueprint for a significant overhaul of schools funding. It recommended a realignment of the historic funding roles of the Commonwealth, state and territory

2 Senate Selection of Bills Committee, *Report No 16 of 2012*, 29 November 2012.

3 Review of Funding for Schooling Expert Panel (Expert Panel), *Review of funding for schooling: final report*, Department of Education, Employment and Workplace Relations (DEEWR), Canberra, December 2011, p. xiii.

4 Expert Panel, *Review of funding for schooling: final report*, DEEWR, December 2011, p. xiii.

5 Expert Panel, *Review of funding for schooling: final report*, DEEWR, December 2011, p. xiii.

governments whereby there would be a 'more balanced alignment of public funding responsibilities for government and non-government schools',⁶ with a strong focus on improving educational outcomes of disadvantaged students.

- 1.11 The Review also recommended a dollar per student resource standard and various dollar loadings for disadvantage, regardless of the type of school a student attends (government or non-government).
- 1.12 The Review acknowledged that additional funding alone would not be sufficient to improve educational outcomes. It therefore called for 'continued and renewed efforts to strengthen and reform Australia's schooling system'.⁷
- 1.13 The Bill forms the first phase of the Government's legislative response to recommendations made by the Gonski Review, and, in the Prime Minister's words, 'is the government's plan for the future of Australian education'.⁸

Intent of the Bill

- 1.14 The Bill articulates the Government's aspirations for school education in Australia. It also provides the foundation for a legislative framework that seeks to put 'an excellent education for every child at the heart of how Australia delivers and funds schooling'.⁹
- 1.15 The purpose of the Bill is to:
- articulate and acknowledge the Government's aspirations for schooling;
 - set goals for Australian school education 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 Commonwealth Government funding for schools with grants based on outlined principles.¹⁰

6 Expert Panel, *Review of funding for schooling: final report*, DEEWR, December 2011, p. xvii.

7 Expert Panel, *Review of funding for schooling: final report*, DEEWR, December 2011, p. xix.

8 The Hon Julia Gillard, Prime Minister, *House of Representatives Hansard*, Wednesday 28 November 2012, p. 13639.

9 Australian Education Bill 2012 Explanatory Memorandum, p. 1.

10 Marilyn Harrington, 'Australian Education Bill', *Bills Digest No 73 (2012-2013)*, 11 February 2013, p. 2.

- 1.16 In so doing, the Bill incorporates core recommendations made by the Gonski Review to implement:
- 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.

Goals and directions for education reform

- 1.17 The Preamble to the Bill establishes a set of principles and goals for the future of education in Australia. The Preamble provides:

All students in all schools are entitled to an excellent education, allowing each student to reach his or her full potential so that he or she can succeed and contribute fully to his or her community, now and in the future.

The quality of a student's education should not be limited by where the student lives, the income of his or her family, the school he or she attends, or his or her personal circumstances.

- 1.18 The Bill provides a legislative framework for education reform to implement these overarching principles for Australia's education system into the future. Clause 3(b) establishes three key goals for Australian schooling:
- to provide an excellent education for all students;
 - to be highly equitable; and
 - for Australia to be placed in the top five countries in reading, science and mathematics, quality and equity in recognised international testing by 2025.
- 1.19 In 2008, all education ministers agreed to similar goals in the Melbourne Declaration on Educational Goals for Young Australians.¹¹ The Declaration has framed the formulation of Commonwealth and state and territory government school education policies and programs.¹²

11 Ministerial Council for Education, Early Childhood Development and Youth Affairs (MCEECDYA), 'Melbourne declaration on educational goals for young Australians', MCEECDYA, Melbourne, December 2008, viewed 28 February 2013, http://www.mceecdya.edu.au/mceecdya/melbourne_declaration,25979.html

12 MCEECDYA, 'Melbourne declaration on educational goals for young Australians', MCEECDYA, Melbourne, December 2008, viewed 28 February 2013, http://www.mceecdya.edu.au/mceecdya/melbourne_declaration,25979.html

Improving performance of schools and students

- 1.20 In order to achieve the goals proposed in clause 3(b), the Bill allows for the development of a National Plan for School Improvement coupled with a needs-based funding arrangement for all schools in Australia.

The National Plan for School Improvement

- 1.21 A National Plan for School Improvement (the National Plan) will be developed in consultation with the states and territories as well as non-government education authorities. Broadly, the National Plan will:
- improve school performance and the educational outcomes of school students;
 - drive continuous school improvement; and
 - provide opportunities for school students to develop capabilities to engage with Asia.¹³
- 1.22 The Explanatory Memorandum outlines that the National Plan will:
- recognise the commitment of all parties to undertake further work in five reform directions that are proven to make a difference in schools and to our students.¹⁴
- 1.23 Clause 7 specifies the five reform directions which will be examined in the National Plan:
- quality teaching;
 - quality learning;
 - empowered school leadership;
 - transparency and accountability; and
 - meeting student need.
- 1.24 The Bill specifies the goals for each of these five reform directions and the standards that will be sought.
- 1.25 The Bill does not provide detail on how and when the National Plan will be implemented, nor how its impact might be tracked in the future. However, clause 9 makes clear that agreement to implement the final National Plan will be a prerequisite to receiving funding under a new funding arrangement that is foreshadowed in the Bill.

13 Australian Education Bill 2012, clause 6.

14 Australian Education Bill, Explanatory Memorandum, p. 1.

Benchmarks and mapping progress

1.26 Under clause 8, the Commonwealth will consult with state and territory governments as well as non-government educational authorities to develop benchmarks to measure the performance and progress of schools and students towards meeting the objectives provided at clause 3(b).

1.27 The Bill also permits the Commonwealth to ‘implement arrangements’ to support:

- increased transparency in schools;
- assessing and improving school performance; and
- timely exchange of information about effective methods in school- and student-improvement.¹⁵

1.28 At a recent meeting of the Ministerial Council on School Education and Early Childhood, education ministers agreed to collaboratively develop progress targets to track progress and schools’ improvement. Associate Secretary of the Department of Education, Employment and Workplace Relations (DEEWR), Mr Tony Cook, explained:

All education ministers have agreed to do this together. The decision that the ministerial council made two weeks ago was that we as a standing council would develop targets together. We would then progress or chart progress in relation to those targets. So a paper will be going back to the ministerial council about how we actually do that.¹⁶

School Funding

1.29 The Bill foreshadows changes to the system of schools funding in Australia. Importantly, the Bill provides the architecture, or conceptual framework, of the future funding system.

1.30 Many witnesses suggested the system of schools funding in Australia is incredibly complex, and expressed hope that a new system of funding will be more transparent and more easily understood by the community.¹⁷ DEEWR stated:

15 Australian Education Bill 2012, subclause 8(b).

16 Mr Tony Cook, Associate Secretary, Department of Education, Employment and Workplace Relations (DEEWR), *Committee Hansard*, Canberra, 15 February 2013, p. 8.

17 Australian Primary Principals Association (APPA), *Submission 3*, p. 7; Australian College of Educators (ACE), *Submission 21*, p. 9; Ms Jane Caro, *Committee Hansard*, Sydney, 18 February 2013, p. 11.

funding is not logical, consistent or publicly transparent and needs to be linked to educational outcomes, and public funding should reflect school and student characteristics, regardless of sector.¹⁸

The current system of Commonwealth funding of schools

- 1.31 A general overview of the current system of schools funding is valuable to understand the different approach taken in the Bill.¹⁹
- 1.32 The Commonwealth Government has contributed to the funding of government and non-government schools since 1964, and is the major provider of public funds for non-government schools.²⁰ State and territory governments are the major provider of public funds for government schools and also contribute funds to non-government schools.²¹
- 1.33 In 2009, following an agreement with the states and territories, the Commonwealth restructured its funding for schools. Most Commonwealth funding for schools is provided under the National Schools Specific Purpose Payment (NSSPP). The NSSPP has two components: one for government schools and one for non-government schools provided through the Intergovernmental Agreement on Federal Financial Relations and the *Schools Assistance Act 2008* respectively.
- 1.34 The Commonwealth's contribution to both government and non-government schools is a percentage of the resource standard known as Average Government School Recurrent Costs (AGSRC).
- 1.35 The AGSRC amounts are based on state and territory government recurrent expense data which includes both Commonwealth Government and state and territory government funds, maintained by the Ministerial Standing Council on School Education and Early Childhood.
- 1.36 Recurrent expense data used to calculate the AGSRC include:
- employee-related expenses;
 - out-of-school expenses;

18 Department of Education, Employment and Workplace Relations (DEEWR), *Submission 15*, p. 5.

19 For more information on the federal funding of schools, see Marilyn Harrington, *Background Note: Australian Government funding for schools explained*, Australian Parliamentary Library, 8 March 2013, available at http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/366868/upload_binary/366868.pdf;fileType=application/pdf#search=%22Australian%20government%20funding%20for%20schools%20explained%22 >

20 Marilyn Harrington, *Background Note: Australian Government funding for schools explained*, Australian Parliamentary Library, 8 March 2013, p. 2.

21 Marilyn Harrington, *Background Note: Australian Government funding for schools explained*, Australian Parliamentary Library, 8 March 2013, p. 2.

- redundancies;
 - other operating expenses; and
 - grants or subsidies paid directly to schools of any school education purpose.²²
- 1.37 Other federal funding for school education is provided through the National Partnerships (NPs) and the Government's own education programs, Commonwealth Own-Purpose Expenses.²³ Appendix C includes a diagram detailing these current arrangements.
- 1.38 Both government and non-government components of the NSSPP, as well as NP payments, are paid by the Commonwealth to state and territory governments under section 96 of the Australian Constitution.

Government schools' Commonwealth funding since 2009

- 1.39 The government schools component of the NSSPP for both primary and secondary school students is 10 per cent of the AGSRC. State and territory governments provide the remaining 90 per cent.
- 1.40 The amount paid by the Commonwealth is indexed annually according to increases in the AGSRC and growth in full-time equivalent enrolments.
- 1.41 The 2012 AGSRC amounts are \$10,057 (for each primary school student) and \$12,445 (for each secondary school student). These amounts are used as the initial 2013 amounts until indexation occurs later this year.²⁴
- 1.42 A lump sum is then provided to state and territory governments based on this formula once the state or territory government has agreed to achieve specific educational outcomes. Each state and territory government then allocates funds from this total pool to schools based on its particular distribution mechanism.²⁵

Non-government schools' Commonwealth funding since 2009

- 1.43 The non-government schools component of the NSSPP, under the *Schools Assistance Act 2008*, originally provided funding from 2009 to 2012. The

22 Expert Panel, *Review of funding for schooling: final report*, DEEWR, December 2011, p. 56. For more information see Marilyn Harrington, *Background Note: Australian Government funding for schools explained*, Australian Parliamentary Library, 8 March 2013, p. 18.

23 The National Partnerships currently funded mirror many of those areas addressed in the Bill, particularly those to be incorporated into the National Plan. A list of the school-related National Partnerships is included in Appendix C.

24 Marilyn Harrington, *Background Note: Australian Government funding for schools explained*, Australian Parliamentary Library, 8 March 2013, p. 18.

25 Marilyn Harrington, *Background Note: Australian Government funding for schools explained*, Australian Parliamentary Library, 8 March 2013, p. 22.

Act was amended to extend recurrent funding until 2013 and capital funding until 2014.²⁶

- 1.44 Commonwealth general recurrent per student funding for non-government schools is based on a system of means testing. Since 2001, the rate at which non-government schools receive general resource grants (GRGs) is determined by a measure of the estimated capacity of a school's community to support its school, that is, its Socioeconomic Status (SES).²⁷ A non-government school's SES score determines its per student general recurrent funding rate, as a percentage of AGSRC. Currently these funding rates range from 13.7 per cent to 70 per cent of AGSRC.²⁸
- 1.45 The distribution arrangement for Commonwealth funding to non-government schools varies. State and territory governments distribute GRGs direct to independent schools. Non-government schools that are part of non-government school system are paid through their system authorities, which have the flexibility to distribute these funds according to their methods.²⁹
- 1.46 Importantly, this funding calculation is not uniformly applied to all non-government schools in Australia. When the system was introduced in 2001, a commitment from the Commonwealth that no schools would be financially worse off under the new system, meant some non-government schools are not funded according to their SES score.³⁰

The new system of general funding under the Bill

- 1.47 Both the Bill and the Government's formal response to the Gonski Review indicate the Commonwealth's intent to move to a new funding system: a dollar per student resource standard coupled with various dollar loadings for disadvantage, regardless of the type of school a student attends.
- 1.48 Clause 9 of the Bill states that an agreement of state and territory governments or non-government educational authorities with the

26 *Schools Assistance Amendment (Financial Assistance) Act 2011* (Cth).

27 A school's SES is calculated by the Australian Bureau of Statistics using census data including three dimensions: income, education and occupation. The SES scores are recalculated every four years according to the latest census data.

28 DEEWR, *Submission 15.1*, Answer to Question on Notice, p. 1; Marilyn Harrington, *Background Note: Australian Government funding for schools explained*, Australian Parliamentary Library, 8 March 2013, p. 8.

29 Expert Panel, *Review of funding for schooling: final report*, DEEWR, December 2011, pp. 45-47.

30 Marilyn Harrington, *Background Note: Australian Government funding for schools explained*, Australian Parliamentary Library, 8 March 2013, p. 8.

Commonwealth on the implementation of the National Plan is a prerequisite for receiving Commonwealth funding for schools.³¹

- 1.49 Whilst the Bill does not detail the funding model, it explains the architecture of the future funding model. The Explanatory Memorandum indicates that the Government plans to populate and refine this framework throughout 2013 in negotiation with the states, territories and the non-government school sector.³²
- 1.50 National schools' reform was an agenda item at the 19 April 2013 meeting of the Council of Australian Governments (COAG). Negotiations between the federal government and state and territory governments have continued, subsequent to that meeting. The communique issued that day indicated that states will have until 30 June 2013 to sign the National Education Reform Agreement (NERA) and bilateral agreements, to ensure that schools and students receive the proposed additional funding in time for the 2014 school year.³³

Base funding: the Schooling Resource Standard

- 1.51 The Bill arises from the system of schools funding proposed by the Gonski Review and provides for a base recurrent funding model known as the Schooling Resource Standard (SRS). Recurrent funding will be allocated according to a formula which calculates an amount 'for every school in recognition of the costs of providing a high quality education'.³⁴
- 1.52 The Explanatory Memorandum explains:
- This funding will be ... based on school characteristics known to effect need for funding.³⁵
- ...
- This will mean that Commonwealth funding takes into account a student's given circumstances, in order to provide a similar level of educational opportunity for all Australian students. Having access to adequate funding to support the needs of their students is the first step to ensuring schools can achieve the objectives of quality and equity.³⁶

31 The current conditions for Commonwealth funding are prescribed by the National Education Agreement for government schools and by the *Schools Assistance Act 2008* for non-government schools.

32 Australian Education Bill 2012, Explanatory Memorandum, p. 3.

33 35th COAG meeting, COAG Communique, 19 April 2013, p. 2.

34 Australian Education Bill 2012, clause 9(b).

35 Australian Education Bill 2012, Explanatory Memorandum, pp. 2-3.

36 Australian Education Bill 2012, Explanatory Memorandum, p. 3.

- 1.53 The Commonwealth is currently negotiating with state and territory governments and the non-government education sector on models and settings for the SRS. The models and settings currently under negotiation are not publicly available.

Capacity-to-contribute and non-government schools

- 1.54 Accepting the original recommendation made by the Gonski Review, Commonwealth funding to non-government schools will be assessed on a 'capacity to contribute' calculation.³⁷
- 1.55 Under this calculation, which uses SES data from the Australian Bureau of Statistics,³⁸ Commonwealth funding will range from 10 to 90 per cent of the SRS.³⁹ DEEWR emphasised that the fees any individual school charges is an individual matter to be decided by the school itself.⁴⁰
- 1.56 DEEWR reported that based on its current negotiations with the states and territories and with the non-government education authorities:
- we do not see a significant change in relation to the current [distribution] arrangements in place. The current arrangements in place particularly talk about Commonwealth funding going to state treasuries which pass it on to the non-government sector. We do not see a significant shift in that in the work we are doing at the moment. That will be settled in the final phase.⁴¹
- 1.57 Importantly, the Government has made a commitment that 'no school will lose a dollar as a result of the review'.⁴²
- 1.58 DEEWR stated that where a school's current funding is above the proposed SRS, the Government's commitment that no school will face reduced funding will be upheld:
- If you have a school that is [receiving an amount] above the model... the government will consider a range of options that [the Department] will make available to them as to how that school's funding continues to ensure that they meet the commitment that no school loses a dollar.⁴³
- 1.59 A similar commitment was upheld in 2001 when the Commonwealth altered its funding structures to non-government schools.

37 Mr Cook, DEEWR, *Committee Hansard*, Canberra, 15 February 2013, p. 4.

38 Mr Cook, DEEWR, *Committee Hansard*, Canberra, 15 February 2013, p. 3.

39 Mr Cook, DEEWR, *Committee Hansard*, Canberra, 15 February 2013, p. 10.

40 Mr Cook, DEEWR, *Committee Hansard*, Canberra, 15 February 2013, p. 10.

41 Mr Cook, DEEWR, *Committee Hansard*, Canberra, 15 February 2013, p. 11.

42 Mr Cook, DEEWR, *Committee Hansard*, Canberra, 15 February 2013, p. 4.

43 Mr Cook, DEEWR, *Committee Hansard*, Canberra, 15 February 2013, p. 5.

- 1.60 As noted above, the Bill requires a commitment by schools to implement the National Plan as a prerequisite for Commonwealth funding. Given Commonwealth Government schools funding is provided via the state treasuries, some stakeholders have speculated that 'it is unclear as to what the position of independent schools would be if their State/Territory Government did not commit to the National Plan'.⁴⁴

Loadings to address educational disadvantage

- 1.61 The Bill also establishes an additional funding stream in the form of loadings to address the following educational disadvantages:
- having a disability;
 - being Aboriginal or Torres Strait Islander;
 - having a low socioeconomic status;
 - not being proficient in English as a result of the ethnic background or immigration status of a student or students family;
 - the size of a student's school; and
 - the location of a student's school.⁴⁵
- 1.62 This system of loadings implements the recommendation of the Gonski Review that Commonwealth funding be provided on the basis of a SRS which will provide a base amount for all students according to a formula, and additional loadings that addresses educational disadvantage.⁴⁶
- 1.63 The loadings system is sector-blind, and will be available to government and non-government schools alike.

Commencement and transition period to new arrangements

- 1.64 Some stakeholders sought clarification of the transition period from current funding arrangements to the new system.⁴⁷
- 1.65 If passed, the Act will commence on 1 January 2014. DEEWR indicated a six-year transition period, with schools progressively migrating to the new funding and school improvement system from 2014 and full completion in 2019.⁴⁸

44 Independent Schools Queensland, *Submission 6*, p. 8.

45 Australian Education Bill 2012, subclause 9(c).

46 Australian Education Bill 2012, Explanatory Memorandum, p. 3.

47 Australian Association of Christian Schools, *Submission 23*, p. 14; Catholic Schools Office Diocese of Broken Bay, *Submission 26*, p. 13; Independent Schools Victoria, *Submission 41*, p. 4; Independent Schools Council of Australia, *Submission 17*, p. 28;

48 DEEWR, *Submission 15.1*, p. 1 and Mr Cook, DEEWR, *Committee Hansard*, Canberra, 14 March 2013, p. 9.

Amendments foreshadowed

- 1.66 The Explanatory Memorandum states the Government's intent is that amendments to the Bill 'will be moved following the conclusion of negotiations with States, Territories and the non-government school sector'.⁴⁹
- 1.67 DEEWR advised:
- The initial bill certainly outlines the aspirations and sets the framework for funding, but the bill would be amended once negotiations are finalised with states and territories and non-government authorities.⁵⁰
- 1.68 Two specific amendments were discussed by DEEWR during the inquiry: introducing a funding formula and addressing the legal enforceability of the final Act. First, an amendment is likely to be introduced to give effect to any funding model agreed to.⁵¹
- 1.69 The possible content of the funding model and its corresponding amendment was discussed at length by stakeholders. The Committee has not been tasked with reporting on proposed amendments to the Bill. To enter a course of speculation about what Government ought to agree is beyond the terms of this inquiry and possibly deleterious to confidential negotiations between the Commonwealth and state and territory governments, and non-government education authorities.
- 1.70 The second amendment discussed during the inquiry will affect clause 10 of the Bill. Clause 10 provides that the Act will not create legally enforceable rights or duties. The Explanatory Memorandum's 'Notes on Clauses' states that this clause (as currently drafted) is:
- intended to protect the integrity of current school funding and management arrangements in the period before agreement on the details of schooling reform is reached between the Commonwealth, State and Territory Governments, and non-government education authorities.⁵²
- 1.71 Some stakeholders expressed concern regarding the legal unenforceability of the Bill. Many found this clause to be confusing, contradictory or unnecessary.⁵³

49 Australian Education Bill 2012, Explanatory Memorandum, p. 3.

50 Mr Cook, DEEWR, *Committee Hansard*, Canberra, 15 February 2013, p. 7.

51 Mr Cook, DEEWR, *Committee Hansard*, Canberra, 15 February 2013, p. 7.

52 Australian Education Bill 2012, Explanatory Memorandum, p. 10.

53 For example: Public Policy Institute, *Submission 4*, p. 4; ACE, *Submission 21*, p. 2; Catholic Schools Office (Diocese of Broken Bay), *Submission 26*, p. 5.

- 1.72 While uncommon, this type of provision is not without precedent and there are examples of similar provisions in other Commonwealth statutes. For example, section 10 of the *Carer Recognition Act 2010* and section 3 of the *Charter of Budget Honesty Act 1998*.⁵⁴
- 1.73 DEEWR Chief Lawyer, Mr George Kriz, indicated that clause 10 will be amended once funding agreements with state and territory governments and the non-government education authorities is reached:
- it will be amended and it will need to be amended in order for it to be able to be actually put in place the compact that is arrived at with the states.⁵⁵
- 1.74 Similarly, Mr Cook stated:
- I would imagine that we would be looking very closely at that clause when we have the amendments going forward to see what the final bill would look like in the end.⁵⁶
- 1.75 The Committee appreciates that it is rare for Bills to include clauses which render the final Act unenforceable in a court of law. On the basis that such clauses are included in Bills is so infrequent, community concern or confusion at their role is understandable.
- 1.76 However, DEEWR provided reassurance that the clause, at some point in the future, will require some form of amendment or removal.⁵⁷ On the advice of DEEWR, this will occur once funding agreements have been finalised and agreed to.⁵⁸
- 1.77 Further, Mr Kriz stated that both these amendments (funding agreements and the amendment or removal of clause 10) are likely to occur before the final passage of the Bill (that is in the consideration-in-detail stage):
- It [is] very clear that the government's intent is that subsequent amendments to this bill will be moved following the conclusion of negotiations ... with the states, territories and non-government school sectors, ensuring reform directions are agreed, of a collaborative nature, able to be implemented. The Commonwealth funding will obviously be dependent on the agreement being

54 Mr George Kriz, Chief Lawyer, DEEWR, *Committee Hansard*, Canberra, 15 February 2013, p. 11.

55 Mr Kriz, DEEWR, *Committee Hansard*, Canberra, 15 February 2013, p. 11.

56 Mr Cook, DEEWR, *Committee Hansard*, Canberra, 15 February 2013, p. 7.

57 Mr Cook, DEEWR, *Committee Hansard*, Canberra, 15 February 2013, p. 7; Mr Kriz, DEEWR, *Committee Hansard*, Canberra, 15 February 2013, p. 11; Mr Kriz, DEEWR, *Committee Hansard*, Canberra, 14 March 2013, p. 10.

58 Mr Kriz, DEEWR, *Committee Hansard*, Canberra, 14 March 2013, p. 10.

reached, and as I understand it this bill will be amended before its final passage.⁵⁹

Procedural questions arising during inquiry

- 1.78 The debate on the second reading of the Bill resumed in the House on 12 February 2013, whilst the Committee was conducting its inquiry. The resumption of a second reading debate while a bill is under consideration by a committee, though not without precedence, is highly unusual.
- 1.79 The resumption of debate on the second reading while the Bill was under consideration was queried by some Members of the House. Among other matters raised, Members suggested that Standing Order 143 prohibited the resumption of debate. Standing Order 143 provides that:
- After the first reading but before the resumption of debate on the motion for the second reading:
- ...
- (b) a determination may be made by the Selection Committee as provided by standing order 222 to refer a bill to a committee for an advisory report.
- 1.80 Standing Order 143 specifies the timing for the referral of a bill by the Selection Committee, as occurring prior to the resumption of debate on the motion for the second reading. It does not limit the resumption of a second reading debate in the House once such a referral has been made.
- 1.81 Standing Order 148 prevents the House from progressing to consideration in detail stage of the Bill before the Committee reports. However, the standing orders do not preclude the House from resuming a second reading debate on a bill which is the subject of an ongoing committee inquiry.⁶⁰

59 Mr Kriz, DEEWR, *Committee Hansard*, Canberra, 14 March 2013, p. 10.

60 Standing Order 148.

