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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SCHOOLS ASSISTANCE (LEARNING TOGETHER – ACHIEVEMENT THROUGH CHOICE AND OPPORTUNITY) AMENDMENT BILL 2006

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education, Science and Training, the Honourable Julie Bishop MP)
OUTLINE

The purpose of the Bill is to amend the Schools Assistance (Learning Together – Achievement Through Choice and Opportunity) Act 2004 (the Act), which provides funding for Australian Government programmes of financial assistance to the States and Territories for government and non-government schools for the 2005 to 2008 quadrennium.

The Bill will amend the Act to automatically provide maximum general recurrent grants funding (70% of Average Government School Recurrent Costs) for non-government schools that primarily cater for students with emotional, social or behavioural difficulties who are at risk of leaving mainstream schooling. The Bill includes a new definition of “special assistance school”.

The amendments to the Act will operate in a similar manner as the existing provisions for non-government schools recognised as special schools (Part 6, Division 2, Subdivision G). Non-government schools that meet the definition of “special assistance school” will receive maximum general recurrent grant funding, without regard to the socio-economic status (SES) of the school community, as is the case for non-government schools recognised as special schools. Amendments to the Act in relation to schools that meet the new definition of “special assistance school” mirror the existing provisions applying to special schools.

The Bill will also amend Column 3 in Schedule 3 to the Act to move uncommitted capital infrastructure grant funding for government schools from 2005 to 2006. Funding from the 2008 programme year will be brought forward to 2006. Capital infrastructure grants are provided under the Investing in Our Schools Programme to restore and build Australia’s school buildings and grounds.

The Bill will include a regulation making power under the Act to allow funding for a programme year to be carried over or brought forward to another programme year (but not moved to an earlier year). This amendment will remove the need for an amendment to the Act when programme funding for a year needs to be carried over (or brought forward) during the funding quadrennium covered by the Act.

For example, with this power, the transfer from 2005 to 2006 of capital infrastructure grants under the Investing in Our Schools Programme included as an amendment in this Bill (outlined above) would have been undertaken by making regulations rather than an amendment to the Act.

The Bill will also repeal section 125 of the Act as the scope of the new regulation making power in section 123A will allow regulations previously made under section 125 to be made under section 123A. Section 125 of the Act provided for the making of regulations which adjusted the amounts of financial assistance in columns 3 and 5 of Part 1 of Schedule 9. The amounts were adjusted to ensure the maintenance of pre-existing funding levels.

Amounts transferred between programme years under proposed section 123A will be adjusted by regulations made under sections 124 and 126. For example, if the regulations made under section 124 specify a recurrent number for a programme year, an amount specified for that same
programme year in the regulations made under section 123A will be adjusted by that recurrent number.

For programmes under the Act with under commitments for the 2005 programme year, the Bill also provides for the movement of uncommitted 2005 appropriation to the 2006 programme year. This is to ensure that this funding is available in 2006 once the Bill is passed, and not require a regulation to be made immediately to ensure access to the appropriation.

The Bill will also move underspent Tutorial Voucher Initiative funding from 2004 under the States Grants (Primary and Secondary Education Assistance) Act 2000, to the 2006 year of the National Projects element of the Literacy, Numeracy and Special Learning Needs Programme under the Act. The pilot Tutorial Voucher Initiative, undertaken in 2005, provided additional assistance to parents of students who did not meet the Year 3 reading benchmark in 2003, in the form of a $700 tutorial voucher. It is intended to provide assistance in 2006 to eligible students who did not receive tuition under the pilot in 2005.

Finally, the Bill will amend an incorrect cross reference in a defined term in subsection 36(4) by amending “section 20 agreement” to “section 30 agreement”.

FINANCIAL IMPACT

The cost of providing maximum general recurrent funding to those non-government schools that cater primarily for students with social, emotional or behavioural difficulties who are at risk of leaving mainstream schooling is estimated at $2.3 million over the 2005-2008 quadrennium.

Movement of unspent Tutorial Voucher Initiative funding from 2004 to the 2006 programme year increases the National Projects element of the Literacy, Numeracy and Special Learning Needs Programme by $8.9 million in 2006.

All other proposed amendments have no financial impact on the 2005-2008 quadrennium.
NOTES ON CLAUSES

Clause 1 – Short title

Provides for the Act to be cited as the *Schools Assistance (Learning Together – Achievement Through Choice and Opportunity) Amendment Act 2006*.

Clause 2 – Commencement

Subclause 2(1) inserts a three column table setting out commencement information for various provisions in the Act. Each provision of the Act specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table, and any other statement in column 2 has effect according to its terms.

The table provides for sections 1 to 3 to commence on Royal Assent. Item 3 in Schedule 1 (which is a minor technical amendment) commences immediately after the commencement of section 36 of the *Schools Assistance (Learning Together – Achievement Through Choice and Opportunity) Act 2004*.

Items 1, 2, 4 to 20; 23 to 25; 29, 30, 32, 33 and 35 of Schedule 1 also commence on Royal Assent. Items 21, 22, 26 to 28; 31 and 34 of Schedule 1 commence on a single day to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 6 months beginning on the day the Act receives Royal Assent, the provisions commence on the first day after the end of that period.

Subclause 2(2) provides that column 3 of the table contains additional information which may be added to or edited in any published version of the Act, but that information in this column is not part of the Act.

Clause 3 – Schedule(s)

Provides that each Act that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule, and that any other item in a Schedule has effect according to its terms.
Schedule 1 — Amendments

Schools Assistance (Learning Together – Achievement Through Choice and Opportunity) Act 2004

Item 1 – Section 4

Section 4 sets out definitions of a number of terms used in the Act. Item 1 adds a definition of special assistance school to section 4. A special assistance school is a non-government school in a State that has been, or is likely to be, recognised by the State Minister as a special assistance school, and primarily caters for students with social, emotional or behavioural difficulties.

Item 2 – Paragraph 6(d)

Section 6 of the Act explains what is meant by ‘funding level’ for a school. Item 2 includes a reference to special assistance schools in paragraph 6(d) as a consequence of the amendment made by item 1.

Item 3 – Subsection 36(4)

Section 36 sets out a number of educational accountability requirements that must be included in agreements made under the Act with non-government schools or approved school systems. Item 3 corrects an incorrect cross-reference in subsection 36(4), to ensure this subsection refers to an agreement made under section 30 of the Act, rather than section 20. The note at the end of this item makes this clear. This item commences retrospectively; however, it is a minor technical change and will not affect the rights of, or impose obligations on, any person.

Items 4 and 5 – After paragraph 47(3)(h) and paragraph 47(3)(j)

Section 47 deals with the list of non-government schools that must be kept by the Minister under the Act. Subsection 47(3) sets out the details for each school that must be included in the list. Item 4 adds, as paragraph 47(3)(ha), a requirement that the list include whether or not a school is a special assistance school. Item 5 adds a reference to a special assistance school to paragraph 47(3)(j) as a consequence of the change made by item 4.

Item 6 – After paragraph 49(2)(e)

Section 49 sets out a simplified outline of Part 4 of Division 1 of the Act. Subsection 49(2) sets out the circumstances in which the list of non-governments schools may be varied. Item 6 adds change of status as a special assistance school to the set of circumstances in which the list may be varied.
Item 7 – Subsection 50(1) (note 2)

Makes a technical amendment to subsection references in note 2 after subsection 50(1) as a consequence of the amendments made by items 8 and 9.

Item 8 – After subsection 50(4)

Section 50 deals with when the list of non-governments schools kept under the Act may be varied. Item 8 inserts new subsection 50(4A) which provides that if a school in a State that is included in the list as a special assistance school ceases to be recognised by the State as a special assistance school, the Minister may vary the list to:

- remove the reference to the school as a special assistance school; and
- include the school’s SES score; and
- change the school’s funding level.

This mirrors the requirements of subsection 50(4) which refers to special schools.

Item 9 – After subsection 50(5)

Inserts new subsection 50(5A) which provides that if a school in a State that, at a particular time, is included in the list, and not included as a special assistance school, but that at a later time is recognised by the State as a special assistance school, the Minister may vary the list to:

- include a reference to the school as a special assistance school; and
- remove the school’s SES score; and
- change the school’s funding level.

This mirrors the provisions of subsection 50(5) which refers to special schools.

Item 10 – Paragraph 64(1)(a)

Section 64 provides that if the Minister varies the list of non-government schools in any of the circumstances set out in subsection 64(2), the Minister must, among other things, determine the school’s SES score if the school is not a special school; determine the school’s current funding level and vary the list accordingly. Item 10 amends paragraph 64(1)(a) so that the Minister must determine the school’s SES score if the school is neither a special school nor a special assistance school.

Items 11 and 12 – Paragraphs 69(1)(a) and 69(1)(b)

Section 69 deals with authorising payment of capital grants for government schools. Subsection 69(1) provides that the Minister may make a determination authorising payment of capital expenditure in connection with government schools of amounts totalling not more than the sum of the amounts in columns 2 and 3 of the table in Schedule 3. Items 11 and 12 change paragraphs 69(1)(a) and (b) to refer to the amounts, if any, set out in the relevant part of the schedule.
**Item 13 – Subsection 71(7)**

Section 71 provides a simplified outline of Division 2 of Part 6 of the Act (grants for general recurrent expenditure). Subsection 71(7) states that special schools are dealt with under Subdivision G of Division 2. **Item 13** amends this to include a reference to special assistance schools also being dealt with in Subdivision G.

**Items 14, 15 and 16 – Paragraphs 74(1)(b), 75(b) and 76(1)(d)**

Division 2 of Part 6 of the Act deals with grants to non-government schools for general recurrent expenditure. Paragraph 74(1)(b) provides that Subdivision D (maintained year 2000 funding) applies to a school if it is not a special school. **Item 14** amends this paragraph to include a reference to a special assistance school.

Paragraph 75(b) provides that Subdivision E (maintained Catholic school funding) applies to a school if it is not a special school. **Item 15** amends this paragraph to include a reference to a special assistance school.

Paragraph 76(1)(d) provides that Subdivision F (guaranteed year 2004 SES funding) applies to a school if it is not a special school. **Item 16** amends this paragraph to include a reference to a special assistance school.

**Item 17 – Subsection 77(1)**

Section 77 provides that Subdivision G (special schools) applies to a school if that school is a special school. **Item 17** amends subsection 77(1) to include a reference to a special assistance school.

**Item 18 – Subdivision G of Division 2 of Part 6 (heading)**

Amends the heading of this subdivision so that it reads “Subdivision G – Special Schools and special assistance schools”.

**Items 19 and 20 – Paragraphs 99(2)(a) and 99(2)(b)**

Section 99 deals with authorisation of capital grants for non-government schools. Subsections 99(1) and (2) provide that the Minister may make a determination authorising payment of capital expenditure in connection with non-government schools of amounts totalling not more than the sum of the amounts in columns 2 and 3 of the table in Schedule 5. **Items 19** and **20** change paragraphs 99(2)(a) and (b) to refer to the amounts, if any, set out in the relevant part of the schedule.
Item 21 – After Division 1 of Part 11

Inserts new Division 1A which deals with changes to grant amounts for particular programme years. Proposed section 123A(1) provides that the regulations may specify an amount for a relevant column for a particular programme year. Proposed subsection 123A(2) provides that if regulations are made under subsection 123A(1) specifying an amount for a relevant column for a programme year, the Act has effect as if the amount specified in the relevant column for the programme year were the amount specified in the regulations for that relevant column for that programme year.

Proposed subsection 123A(3) states that to avoid doubt, an amount specified in regulations made under subsection 123A(1) may be affected by the operation of section 124 or 126. Sections 124 and 126 provide for cost supplementation of recurrent and capital grant amounts, via regulations.

Proposed subsection 123A(4) provides that the regulations may specify an amount under subsection 123A(1) that is nil.

Proposed subsection 123A(5) provides that for the purposes of section 123A, each of the following columns is a relevant column:

- column 2 or 3 of the table in Schedule 3 [capital grants for government schools];
- column 2 or 3 of the table in Schedule 5 [capital grants for non-government schools];
- column 2 of the table in Schedule 7 [grants of short term emergency assistance];
- column 2 or 3 of the table in Part 1 of Schedule 8 [grants for targeted assistance];
- column 2, 3, 4, 5 or 6 of the table in Part 1 of Schedule 9 [grants for literacy, numeracy and special learning needs].

This item, while directed to all non per-capita programmes under the Act, is specifically designed to assist the financial management of the project-type programmes such as literacy and languages projects which often involve projects being undertaken over a number of years.

Item 22 – Section 125

Section 125 contains a power to make regulations specifying an amount for columns 3 or 5 of the table in Part 1 of Schedule 9 (guarantee amounts) for a particular programme year. Item 22 repeals section 125. As a result of the amendments made by item 21, this regulation making power is no longer required (proposed section 123A includes a similar regulation making power).

Items 23, 24 and 25 – Schedule 3 (cells at table items 1, 2 and 4, column 3)

Schedule 3 deals with capital grants for government schools, and sets out maximum amounts that may be paid for capital and capital infrastructure (Investing in Our Schools Programme) grants.

Items 23, 24 and 25 amend table items 1, 2 and 4 respectively in column 3 of the table in Schedule 3, to vary the amounts. Table item 1 in column 3 becomes $35,100,000 (it was
These amendments are required to account for an underspend in the Investing in Our Schools Programme funding allocated for 2005, to ensure those funds can be spent in 2006. The amendments also bring forward the entire funding allocation from the 2008 calendar year to allow it to be spent in the 2006 calendar year.

**Items 26 – Schedule 3 (note 1 to the table)**

Schedule 3 sets capital grants for government schools. As a consequence of the amendments made by item 21, item 26 repeals note 1 to the table in Schedule 3 and inserts a new note 1 to make it clear that the operation of sections 123A and 126 (cost supplementation for capital grants) may affect the amount of the grants.

**Item 27 – Schedule 5 (note 1 to the table)**

Schedule 5 deals with capital grants for non-governments schools. As a consequence of the amendments made by item 21, item 27 repeals note 1 to the table in Schedule 5 and inserts a new note 1 which states that the operation of sections 123A and 126 (cost supplementation for capital grants) may affect the amount of the grants.

**Item 28 – Schedule 7 (note to the table)**

Schedule 7 deals with grants of short term emergency assistance for non-government schools. As a consequence of the amendment made by item 21, item 28 amends the note to Schedule 7 to make it clear that the operation of sections 123A and 124 may affect the amount of the grants.

**Item 29 and 30 – Part 1 of Schedule 8 (cells at table item 1 and 2, column 3)**

Part 1 of Schedule 8 deals with grants for targeted assistance, and column 3 sets out the grants to foster languages education. Items 29 and 30 replace amounts in the Schedule to account for an underspend in the 2005 calendar year. The unspent amount is moved from the 2005 calendar year to the 2006 calendar year in the Schedule. These amendments will ensure that the funds can be spent on grants to foster languages education as originally intended.

**Item 31 – Part 1 of Schedule 8 (note to the table)**

The note at the end of the table in Part 1 of Schedule 8 states that the operation of section 124 may affect the amount of the grants. As a consequence of the amendments made by item 21, item 31 amends the note to make it clear that the operation of section 123A may also affect the amount of the grants.
Items 32 and 33 – Part 1 of Schedule 9 (cells at table items 1 and 2, column 6)

Part 1 of Schedule 9 sets out grants for literacy, numeracy and special learning needs. Column 6 deals with grants for national projects. **Item 32** reduces the amount in table item 1 in column 6 to account for an underspend in funds allocated for the 2005 calendar year. **Item 33** increases the amount in table item 2 in column 6 to account for this underspend and ensure the funds can be spent in the 2006 calendar year on grants for national projects. The new amount in table item 2 of column 6 also accounts for underspent funding from the pilot tutorial voucher initiative which was conducted in 2005.

Item 34 – Part 1 of Schedule 9 (note to the table)

The note at the end of the table in Part 1 of Schedule 9 states that the operation of section 124 may affect the amount of the grants. As a consequence of the amendments made by item 21, **item 34** amends the note to make it clear that the operation of section 123A may also affect the amount of the grants.

**States Grants (Primary and Secondary Education Assistance) Act 2000**

Item 35 – Part 1 of Schedule 8 (cell at table item dealing with 2004 programme year, column 4)

Part 1 of Schedule 8 to the Act deals with grants for targeted assistance. Column 4 in the table sets out maximum amounts for grants to foster literacy and numeracy. As a consequence of the amendment made by item 33, **item 35** reduces the grant amount in the table item dealing with the 2004 calendar year in column 4. This amendment ensures that the unspent funds can be spent on grants for national projects in 2006.