Explanatory Statement

**Australian Education (SES Scores) Amendment Determination 2017 (No. 1)**

**Summary**
The *Australian Education (SES Scores) Amendment Determination 2017 (No. 1)* (the Amendment Determination) is made by the Minister for Education and Training under subsection 52(2) of the *Australian Education Act 2013* (the Act).

The purpose of the Amendment Determination is to set the Socio-economic Status (SES) score for schools of the Corporation of the Synod of the Diocese of Brisbane by amending the existing *Australian Education (SES Scores) Determination 2013* (Principal Determination).

**Background**
The SES score of a school affects the amount of total public funding that is payable under the Act to the approved authority for the school. A school’s SES score determines its ‘capacity to contribute’ percentage in accordance with a table set out in section 54 of the Act. In turn, that capacity to contribute percentage is a factor in the formula that determines the ‘base amount’ of total public funding for a school as set out in section 33 of the Act.

The lower a school’s SES score, the lower its capacity to contribute percentage and the greater the base amount of total public funding to the school (on a per-student basis). Conversely, the higher a school’s SES score, the higher its capacity to contribute percentage, and the lower the base amount of total public funding to the school (on a per-student basis).

The Act provides that certain schools have a capacity to contribute percentage of zero and hence have no SES score. These schools are government schools, special schools and special assistance schools for students with disability and other high-needs students, schools with a majority of Aboriginal and Torres Strait Islander students, and schools in remote areas that are not serviced by government schools (see subsections 52(6) and 54(1) of the Act).

For all other schools eligible for Commonwealth recurrent funding, an SES score needs to be determined. There are two methods by which a school’s SES score can be determined by the Minister under the Act. An SES score can be determined by the Minister by legislative instrument under subsection 52(2), or by administrative decision under subsection 52(3).

The determination of a school’s SES score by administrative decision under subsection 52(3) is the same method used to determine a school’s SES score under the *Schools Assistance Act 2008* and is used to determine an individual school’s SES score. The method for determining an individual school’s SES score is set out in Subdivision B, Division 2, Part 3 of the *Australian Education Regulation 2013* (the Regulation).
It uses data from the Australian Bureau of Statistics about the income, education and occupation characteristics of the Statistical Areas in which the students of the school reside to generate a number representing the socioeconomic status of the student cohort, with 100 being the Australian average SES score.

The determination of a school’s SES score by legislative instrument under subsection 52(2) is done when all schools of a particular approved authority (the entity approved under the Act to receive financial assistance for the schools) will have the same SES score. In determining the SES score of a school, section 20 of the Regulation requires the Minister to have regard to the ‘relevant arrangement’ of the approved authority (if it has one). Under section 6 of the Act, a relevant arrangement is a written arrangement between the Commonwealth and an approved authority relating to grants of financial assistance provided in accordance with the Act to the authority for the school. There is a relevant arrangement with the Corporation of the Synod of the Diocese of Brisbane. In making the Amendment Determination, regard has been had to the relevant arrangement with the Corporation of the Synod of the Diocese of Brisbane.

Under existing legislation, approved authorities for systems of schools are given the option of requesting that SES scores for all of their schools be calculated on a student-weighted system average. The student-weighted system average SES score for a system of schools is calculated by multiplying the notional SES score of each individual school in that system by the number of enrolments at each individual school, then summing this calculation and dividing the total by the total number of enrolments in that system.

The Corporation of the Synod of the Diocese of Brisbane has sought to have a student-weighted system average SES score applied to all of their schools (eleven schools), and the Minister for Education and Training has agreed to do so. The Amendment Determination gives effect to that decision.

**Consultation**
The department consulted with the Corporation of the Synod of the Diocese of Brisbane in relation to the calculation of their student-weighted system average SES scores.

**Regulatory Impact Statement**
The Amendment Determination does not require a Regulatory Impact Statement (RIS). OBPR reference is 22532.

**Authority**
Determinations of SES scores may be made by the Minister for Education and Training by way of legislative instrument under subsection 52(2) of the Act. By operation of subsection 33(3) of the Acts Interpretation Act 1901, the power to make determinations includes a power to amend determinations.
In determining the SES score of a school of an approved authority under subsection 52(2), section 20 of the Regulation requires the Minister to have regard to the relevant arrangement of the approved authority (if it has one).

The Corporation of the Synod of the Diocese of Brisbane currently has a relevant arrangement in place. In making the Amendment Determination, regard has been had to the relevant arrangement of the Corporation of the Synod of the Diocese of Brisbane.

**Explanation of Provisions**

**Sections 1 and 2**
Sections 1 and 2 of the Amendment Determination are formal provisions setting out the name and date of commencement of the Determination.

**Section 3**
Section 3 of the Amendment Determination sets out the Minister’s legal authority to make the Determination.

**Section 4 and Schedule 1**
Section 4 provides that the *Australian Education (SES Scores) Determination 2013* is amended as set out in Schedule 1 to the Amendment Determination.

The Schedule inserts a new item 21 in the table in the Principal Determination, which provides that the SES score for the schools of the Corporation of the Synod of the Diocese of Brisbane is 105. This SES score will be used to calculate Commonwealth recurrent funding for the schools under the Act for 2017 and each later year, unless and until the determination is amended or revoked.
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Education (SES Scores) Amendment Determination 2017 (No. 1)

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Legislative Instrument

The Socio-economic Status (SES) score of a school affects the amount of Commonwealth recurrent funding that is payable under the Act for the school. A school’s SES score determines its capacity to contribute percentage, in accordance with a table set out in section 54 of the Act. In turn, that capacity to contribute percentage is a factor in the formula that calculates the ‘base amount’ of funding for the school.

The Act provides that certain schools have a capacity to contribute percentage of zero, and hence have no SES score: government schools; special schools and special assistance schools for students with disability and other high-needs students; schools with a majority of Aboriginal and Torres Strait Islander students; and schools in remote areas that are not serviced by government schools.

For all other schools eligible for Commonwealth recurrent funding, an SES score needs to be determined. There are two methods by which a school’s SES score can be determined by the Minister under the Act. An SES score can be determined by the Minister by legislative instrument under subsection 52(2), or by administrative decision under subsection 52(3).

The determination of a school’s SES score by legislative instrument under subsection 52(2) of the Act is done when all schools of a particular approved authority will have the same SES score.

This legislative instrument determines the SES score for the schools of the Corporation of the Synod of the Diocese of Brisbane.

Human rights implications

The instrument engages the following human rights:
Right to Education

The instrument engages the right to education which is set out in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to education recognises the important personal, societal, economic and intellectual benefits of education. It requires education be available, safe, and appropriately resourced, dependent on the needs of the child.

This legislative instrument engages the right to education by giving effect to the capacity to contribute mechanism in the Act. The instrument operates to differentiate the base amount of funding provided for the education of students by reference to the school communities’ socioeconomic status. In doing so, it assists in allocating funding to schools in greater need of that funding, thereby increasing access to, and improving the outcomes of, school education.

This legislative instrument is compatible with the right to education.

Right to Equality and Non-Discrimination

The instrument also engages the right to equality and non-discrimination which is found throughout the international human rights treaties, including Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR), Article 2(2) of the ICESCR and Article 2 of the Convention on the Rights of the Child (CRC). The right to equality and non-discrimination confirms that all people are equal and deserving of the same respect. It recognises that people may need to be treated differently in order to achieve equality, for example, by targeting disadvantage.

The right to equality and non-discrimination is engaged and promoted by the instrument which gives effect to the capacity to contribute mechanism in the Act. This mechanism enables the base amount of funding provided for the education of students to be differentiated, on a needs basis, by reference to the school communities’ SES. In doing so, it assists in allocating funding to schools in greater need of that funding, thereby increasing equity in access to, and improving the outcomes of, school education. The instrument therefore promotes the right to equality and non-discrimination.

This legislative instrument is compatible with the right to equality and non-discrimination.

Conclusion

This legislative instrument is compatible with human rights because it is part of the mechanisms in the Act that promote the human rights of equity and education.

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Minister for Education and Training