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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

AUSTRALIAN EDUCATION BILL 2012

EXPLANATORY MEMORANDUM

**(Circulated by authority of the Minister for School Education, Early
Childhood and Youth, the Honourable Peter Garrett AM MP)**

AUSTRALIAN EDUCATION BILL 2012

GENERAL OUTLINE

The Bill provides the foundation for a legislative framework that puts an excellent education for every child at the heart of how Australia delivers and funds schooling. The Bill enshrines a national commitment to ensure that all Australian children can equitably access the high quality education to which they are entitled. The Bill sets out a national vision for schooling reform and for the development of the National Plan for School Improvement.

Australia needs schooling that provides an excellent education for all our children regardless of background, the type of school they go to, or the barriers they face to educational attainment. The skills of a nation's labour force can determine the wellbeing of all Australians.

The principles in the Bill such as an "excellent education" are intended to mark a level of ambition for this reform, recognising that "excellent education" will allow all students to reach their full potential.

The Bill's purpose is to enable our schools, through this framework of reform directions and investment, to achieve the three goals for Australian schooling, included as part of the objects of the Bill:

- for Australian schooling to provide an excellent education for all students;
- for Australian schooling 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.

In order to achieve these objects, the Commonwealth commits itself to work collaboratively with States, Territories, the non-government sector, and other partners to improve school performance through developing and implementing a national plan for school improvement and needs-based funding arrangements.

The reform directions will take into account a given State, Territory, sector or school's needs, strengths and starting points. This will establish a national approach to improving schools and ensures that all schools will be supported to undertake reform.

The 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.

These five reform directions are:

- quality teaching;
- quality learning;
- empowered school leadership;
- transparency and accountability; and
- meeting student need.

Quality teaching means that all teachers will have the skills and support they need to deliver a high quality education for all students. The work of teachers will be informed by rigorous professional standards, best practice, evidence of successful teaching methods and regular feedback. Teachers will be supported at all stages of their career.

Quality learning means ensuring that students reach their full potential. The educational experience for students will be high-quality, inclusive and responsive to the needs of students. A high quality curriculum will equip students to progress in learning, and to develop essential knowledge, understanding and skills for future employment, and participation in the community and global workforce.

Empowered school leadership is about recognising the potential for all principals and teachers to be leaders at the local level: in their classrooms; in the corridor; in the staff room; and in the principal's office. Empowered school leaders will work with students, teachers, parents and the community to make decisions and implement strategies to drive improvement in their schools.

To enhance the performance of our schools, their funding, operation and performance needs to become more transparent and accountable to the community. This includes providing better data on schools and school students to track performance and drive continuous school improvement.

Meeting student need recognises that the funding, teaching, learning and other aspects of the educational experience will have to be different to accommodate individual backgrounds and aspirations. To see all students reach their full potential, this will include recognition of circumstances associated with disadvantage, as specified in the Bill: students with disability; students from Aboriginal and Torres Strait Islander backgrounds; students with poor English capability due to immigration status or ethnic background; students from low-socioeconomic status situations and students from schools which, due to size or location, face barriers to adequate resourcing.

To meet the national expectations we have for our children, this Bill provides assurance that the Commonwealth will introduce a needs-based funding model for future Commonwealth funding. This funding will be provided as grants to States and Territories to assist government schools, and for States and Territories to pass on to non-government education authorities and non-

government schools, based on school characteristics known to effect need for funding.

As recommended by the *Review of Funding for Schooling*, Commonwealth funding will be provided on the basis of a Schooling Resource Standard which will provide a base amount for all students according to a formula that accounts for the costs associated with providing a high-quality education; and additional loadings that address the costs associated with educational disadvantage.

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.

This Bill lays out the overall principles for schools funding in order to achieve the three goals. The Government's intent is that subsequent amendments to this Bill will be moved following the conclusion of negotiations with States, Territories and the non-government school sector. This ensures that the reform directions are agreed, collaborative in nature, and able to be implemented. Commonwealth funding will be made dependent on the parties' agreement to implement the national plan for school improvement. The strength of this two-stage approach to legislation is that it allows the Commonwealth to set the broad framework, based on existing reforms directions that have worked well in improving schools performance, while continuing to negotiate on the detail of the final funding model and the associated education reform requirements.

These amendments will be moved through 2013 with the intention that new funding arrangements are established as of 1 January 2014.

FINANCIAL IMPACT STATEMENT

There is no financial impact associated with the Bill.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The Statement of Compatibility with Human Rights appears at the end of this Explanatory Memorandum.

AUSTRALIAN EDUCATION BILL 2012

Preamble

Building on a range of reforms to ensure our schools continue to improve, the Prime Minister, the Hon Julia Gillard MP, then Minister for Education, commissioned the *Review of Funding for Schooling*.

The Review found that current arrangements for the funding, accountability and transparency of our schools did not support quality outcomes for all our students. It found that while Australian schools perform well, international testing over the past decade indicates declines in Australia's performance relative to other countries. The Review also examined the growing disparity in educational outcomes for students from backgrounds associated with disadvantage: 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.

To ensure that these issues are addressed, and to recognise the benefits of an excellent education, the Parliament acknowledges that:

- all students in all schools are entitled to an excellent education, allowing each student to reach his or her full potential so that they can succeed and contribute fully to their communities, now and in the future (such as an education that promotes social and interpersonal development, engaging students in civic life, as well as providing pathways to further education, training and high value employment);
- 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 (personal circumstances may include a student's indigenous heritage, socioeconomic background, disability or individual learning needs);
- the quality of education should not be limited by a school's location, particularly those schools in regional Australia;
- it is essential that Australian schooling be of a high quality and be highly equitable in order to create a skilled and successful workforce, strengthen the national economy, and increase productivity, leading to greater prosperity for all;
- if Australia is to be a prosperous nation with a high standard of living in the 21st century, the performance of Australia's schools, and school students, must continuously improve, particularly as school

performance in countries around the world and in Australia's region is also improving;

- it is also essential that Australian schooling provide school students with opportunities to engage with Australia's region. Through this engagement, Australia can maximise economic, cultural and social opportunities during the Asian century (including deeper interpersonal connections, a broader understanding of Australia's place in the region, and enhanced cultural awareness);
- to address these matters, future arrangements will be based on the needs of Australian schools and school students, and on evidence of how to provide an excellent education for school students. These arrangements will build on successful reforms to date;
- schools will also need to adopt the opportunities offered by digital education and new evidence-based methods of teaching and learning;
- strong partnerships across the broader community are necessary to support school students, including partnerships between teachers, parents and families, and employers; and
- as Australia's schools are diverse, the Australian Government will recognise the role of the Governments of the States and Territories, non-government education authorities, other partners and schools in delivering school education, and will work with them to support and lift the performance of schools and school students.

As noted above, this Bill recognises that Australia's schools are diverse. Schools range from those operated by States and Territories, to those schools which are part of non-government systems and those with religious basis, to single independent schools with no affiliation.

"Other partners" accounts for the variety of groups and individuals who have a role in supporting the provision of an excellent education. It includes parents and families, those that represent groups of students who may need additional support, groups who represent schools or groups of schools, those that represent the education workforce, and the community.

NOTES ON CLAUSES

Part 1 – Preliminary

Clause 1 – Short title

Clause 1 provides that this Act may be cited as the *Australian Education Act 2012*.

Clause 2 – Commencement

Clause 2 provides that this Act commences on 1 January 2014.

Clause 3 – Objects of this Act

Clause 3 sets out the objects of the Act. There are two key objects of the Act.

First, to acknowledge the matters referred to in the Preamble.

Second, to set out the goals for Australian schooling, so that the matters referred to in the Preamble can be addressed.

In particular, the goals for Australian schooling are:

- for Australian schooling to provide an excellent education for school students;
- for Australian schooling to be highly equitable; and
- for Australia to be ranked, by 2025, as one of the top five performing countries based on the performance of Australian school students in reading, mathematics and science, and based on the quality and equity of Australian schooling. (These rankings are based on Australia’s performance in the Programme for International Student Assessment, or PISA.)

Clause 4 – Definitions

Clause 4 sets out definitions for the Act.

Part 2 – Improving the performance of schools and school students

Clause 5 – Improving the performance of schools and school students

Clause 5 provides that Part 2 of the Act sets out how the Commonwealth will address the matters referred to in the Preamble of the Act and achieve the goals for Australian schooling set out in paragraph 3(b).

Clause 6 – Developing a national plan

Clause 6 provides that the Commonwealth will work with State and Territory Governments and non-government education authorities to develop and implement a national plan to improve school performance and the educational outcomes of school students, continuously drive improvement in schools and provide opportunities for school students to develop capabilities to engage

with Asia. This is intended to be done by addressing the reform directions set out in clause 7.

This Clause is not intended to limit the capacity of States, Territories and non-government school education authorities to develop and implement their own local reform agendas in addition to those contained within the national plan.

Clause 7 – Reform directions for the national plan

Clause 7 sets out the Commonwealth’s five broad reform directions for the national plan. These cover a commitment to quality teaching, quality learning, empowered school leadership, transparency and accountability, and meeting student need.

Subclause 7(1) addresses quality teaching. In particular, it sets out the Commonwealth’s intention to ensure teachers have the necessary skills and support to improve their performance over time and deliver high quality teaching to school students.

Subclause 7(2) addresses quality learning. It states that Australian schooling will provide a high quality educational experience with an environment and curriculum that supports school students to reach their full potential.

Subclause 7(3) addresses empowered school leadership. Specifically, it provides that leaders in schools will have the necessary resources and skills as well as greater power to make decisions and implement strategies at the local level to obtain the best outcomes for their schools and school students.

Subclauses 7(4) and (5) address transparency and accountability. Support will be provided to schools to find ways to improve continuously, with a focus on analysing and applying data on the educational outcomes of school students and ensuring that there is more accountability for schools to the community in relation to their performance and the performance of their school students. Subclause (5) contains a specific commitment to ensure data collected on schools and school students is of better quality and more available to the public than is currently the case.

Subclause 7(6) sets out the reform direction concerning meeting student need. In particular, Australian schooling will place the highest priority on identifying and addressing the needs of school students and providing additional support to school students who require it. Meeting student need takes into account each student’s barriers to learning and supporting their wellbeing.

Clause 8 – Developing benchmarks and supporting improvement

Clause 8 provides that the Commonwealth will work with State and Territory Governments, non-government education authorities, and other partners, to:

- develop benchmarks for assessing the performance of schools and school students; and

- implement arrangements to increase transparency in our schools, assess and improve the performance of schools and gather and share evidence on how school and school student performance can be improved.

Clause 9 – School funding

This clause provides that for any State or Territory, or non-government education authority that reaches agreement with the Commonwealth on implementation of the national plan, Commonwealth funding will be provided for schools or school systems via grants of financial assistance to the States and Territories. Commonwealth funding will be based upon the principles outlined in the clause.

Part 3 – Miscellaneous

Clause 10 – Act does not create legally enforceable obligations etc.

Clause 10 provides that the Act will not create any legally enforceable rights or duties, and that a failure to comply with the Act will not affect the validity of any decision, nor will that failure constitute any ground to review or challenge a decision.

This clause 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.

Clause 11 – Regulations

This clause provides that the Governor-General may make regulations under the Act. No regulations are contemplated under the terms of the current Bill; however, it is likely that regulations will be required to set out the more detailed requirements necessary to support the Bill following the intended amendments to be moved during 2013.

Statement of Compatibility with Human Rights

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

AUSTRALIAN EDUCATION BILL 2012

This Bill is compatible with 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 Bill

Recognising through the Preamble that a child's educational opportunities should be determined by their aspirations rather than their background, the Bill establishes a broad framework to enhance the performance of Australia's schools so that they are fair, equitable and high-performing.

This includes a national goal of ensuring that Australia's schools are both highly equitable and of a high quality, and therefore capable of ensuring that Australia's educational performance results in Australia being in the top five in reading, mathematics and science, quality and equity by 2025 in recognised international testing.

In order to achieve this goal, the Commonwealth commits to work with States, Territories and the non-government school sector to implement a series of reforms under the national plan for school improvement.

Further, the Commonwealth will commit to provide future school funding in the form of grants to States and Territories, along certain principles to ensure that funding is delivered equitably and based on consideration of a student's need, regardless of their background or circumstance.

The Bill does not create any legal rights or duties.

Human rights implications

The Bill promotes the right to equality and non-discrimination, the right to education and the rights of people with disability in the context of education.

The right to equality and non-discrimination are 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 International Covenant on Economic, Social and Cultural Rights (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.

In particular, Article 2 of the CRC requires the rights in the Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The right to equality and non-discrimination is promoted as the Bill contains a commitment to provide funding to support education based on need. This need will include the given circumstances of certain categories of Australian students who currently experience educational disadvantage. The aim of this different treatment is designed to support the overall participation, through access to education, in the social, civil, political, economic and cultural rights given under UN Conventions.

The right to education can be found in Article 13 of ICESCR, Articles 28 and 29 of the CRC, Article 5(e)(v) of the Convention on the Elimination of All Forms of Racial Discrimination, Article 10 of the Convention on the Elimination of All Forms of Discrimination Against Women, and Article 24 of the Convention on the Rights of Persons with Disabilities (CRPD). The rights of people with disabilities are also found in Article 24 of CRPD.

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 need of the child.

The United Nations Committee on Economic, Social and Cultural Rights has stated that education should be available, 'accessible to all, especially the most vulnerable groups' without discrimination on any of the prohibited grounds, physically accessible and economically accessible (General Comment 13).

The right to education and the rights of people with a disability, specifically children, are promoted as a needs-based model of school funding the Bill promotes can ensure that all students can be supported by quality education, and that the disadvantage associated with background is recognised to ensure equity and equality in education outcomes.

**The Hon Peter Garrett MP AM,
Minister for School Education,
Minister for Early Childhood and Youth**