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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

**AUSTRALIAN EDUCATION (CONSEQUENTIAL AND TRANSITIONAL
PROVISIONS) BILL 2013**

EXPLANATORY MEMORANDUM

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

AUSTRALIAN EDUCATION (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2013

GENERAL OUTLINE

The *Australian Education (Consequential and Transitional Provisions) Bill 2013* (the Bill) amends certain Commonwealth laws and contains transitional arrangements consequential to the enactment of the *Australian Education Act 2013*. It forms part of the Government's national school education reform agenda, the full policy context and background of which is set out in the Supplementary Explanatory Memorandum for Government amendments to the *Australian Education Bill 2012*.

The Australian Government has agreed that Commonwealth recurrent and capital funding for all Australian schools, including funding for schools participating in the reform arrangements ('participating schools') and government schools in States and Territories choosing not to participate ('non-participating schools'), will be provided under the proposed *Australian Education Act 2013* from 1 January 2014.

Commonwealth funding to States and Territories for government school recurrent expenditure (the national specific purpose payment for schools) is currently provided under section 11 of the *Federal Financial Relations Act 2009*. The funding is determined on a financial year basis, indexed and apportioned between the States (which, for the purposes of the Act, include the Australian Capital Territory and the Northern Territory) by determination by the Treasurer under subsections 11(4) and (5) of that Act.

The estimated financial year payment, based on the latest available estimates of relevant growth parameters, is paid to the State in advance under section 19 of that Act. By convention, and consistent with the Intergovernmental Agreement on Federal Financial Relations, these payments are made in monthly instalments. The Minister makes a final determination after the end of the financial year, when final parameter values as at 30 June of that year are known. If there is a difference between the estimated and final determined outcome for the financial year, a balancing adjustment (positive or negative) is made in the subsequent financial year.

Schedule 1 of the Bill repeals section 11 of the *Federal Financial Relations Act 2009* in relation to national specific purpose payments for schools and provides transitional provisions to enable a smooth transition for appropriation and management of these payments from a financial year (under the *Federal Financial Relations Act 2009*) to a calendar year appropriation (under the proposed *Australian Education Act 2013*).

Schedule 1 also repeals section 15 of the *Federal Financial Relations Act 2009*, which deals with the total amount of financial assistance for the

2008-09 financial year, as this section is now spent. Notes at subsections 12(3), 13(3) and 14(3) referring to section 15 are also repealed.

Schedule 1 also amends the *Schools Assistance Act 2008* to cease calendar year funding for non-government schools for capital purposes under that Act from the end of the 2013 calendar year.

Schedule 2 of the Bill contains transitional provisions relating to certain requirements under the proposed *Australian Education Act 2013* in order to ensure a smooth transition and reduce the administrative burden associated with moving to the new arrangements. These include:

- approvals for existing approved authorities for schools;
- timing for the requirement for an approved authority to be a body corporate;
- applications for approved authorities not dealt with by 31 December 2013;
- approvals for existing block grant authorities;
- notice of approvals deemed to have been made under Schedule 2;
- timing for implementation plans and school improvement plans;
- definition of a majority Aboriginal and Torres Strait Islander school for 2014; and
- a school's SES score.

Schedule 2 also allows the Governor-General, before 1 January 2015, to make regulations under section 125 of the proposed *Australian Education Act 2013* that deal with transitional matters.

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 (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2013

Clause 1 Short title

This clause sets out how the new Act is to be cited, that is, the *Australian Education (Consequential and Transitional Provisions) Act 2013*.

Clause 2 Commencement

This clause provides that:

- sections 1 to 3 commence on the day the Act receives Royal Assent
- Schedules 1 and 2 commence at the same time as the *Australian Education Act 2013* commences (i.e. 1 January 2014).

Clause 3 Schedule(s)

This clause states that each Act specified in a Schedule to this Bill will be amended or repealed as set out in the Schedules. Any other item included in a Schedule has effect according to its terms.

Schedule 1 – Amendments

Item 1 Section 11

This item repeals section 11 of the *Federal Financial Relations Act 2009*. Section 11 provides for national specific purpose payments to States (which includes the Australian Capital Territory and the Northern Territory) for the purpose of expenditure on schools.

This section is repealed as financial assistance for schools from 1 January 2014 is intended to be dealt with under the proposed *Australian Education Act 2013* (excluding National Partnership payments).

Item 2 Subsections 12(3), 13(3) and 14(3) (notes)

This item repeals the notes under subsections 12(3), 13(3) and 14(3) of the *Federal Financial Relations Act 2009*. The notes under subsections 12(3), 13(3) and 14(3) refer to section 15, which will be repealed by item 3 of Schedule 1 to this Bill as the section is spent.

Item 3 Section 15

This item repeals section 15 of the *Federal Financial Relations Act 2009* which refers to the total amount of financial assistance for the 2008-09 financial year and is therefore spent.

Item 4 Transitional Provisions

Item 4 subitems (1), (2) and (3)

National specific purpose payments for government schools are intended to be replaced by the financial assistance provided for under the proposed *Australian Education Act 2013* from 1 January 2014.

This item allows the repealed section 11 of the *Federal Financial Relations Act 2009* to continue to apply for the 2013-14 financial year but reduces the total amount of financial assistance for schools payable under that section to half that which would normally be paid, to arrive at an amount payable for the six months from 1 July 2013 to 31 December 2013 (as determined by the Treasurer after the end of the 2013-14 financial year).

This ensures there is no doubling-up of the payment of national specific purpose payments for schools and the payment of financial assistance under the *Australian Education Act 2013*.

This item will also allow the Treasurer to:

- continue to determine the manner in which the financial assistance payable under the *Federal Financial Relations Act 2009* for the period 1 July 2013 to 31 December 2013 is indexed and divided between the States;
- continue to make payments in 2014-15 to make up a shortfall to a State if that State has been underpaid under that section.

Item 4 subitem (4)

This subitem ensures that the correct amount is used in the calculation at Part 4 of the *Australian Education Act 2013* of the amount payable for national specific purpose payments for non-participating schools from 1 January 2014 (by ensuring that the calculation refers to the total amount that would have been payable for the 2013-14 financial year under section 11 of the *Federal Financial Relations Act 2009*, and not half that amount).

Item 4 subitem (5)

This subitem provides definitions for use in item 4. 'FFR Act' means the *Federal Financial Relations Act 2009*. 'State' includes the Australian Capital Territory and the Northern Territory.

Item 5 Paragraph 3(3)(b) and item 6 Section 4 (paragraph (b) of the definition of *program year*)

These items amend the *Schools Assistance Act 2008* to ensure that appropriation and management of capital funding for non-government schools ceases under that Act after 31 December 2013. From 1 January 2014, appropriation and management of capital funding for schools it intended to be under the *Australian Education Act 2013*.

Schedule 2 – Transitional Provisions

Item 1 Definitions

This item includes explanations of abbreviations and expressions used in Schedule 2:

- ‘the new Act’ means the *Australian Education Act 2013*. ‘The old Act’ means the *Schools Assistance Act 2008*;
- expressions that are defined for the purposes of the new Act, and are used in relation to the new Act have the same meaning as in the new Act;
- expressions that are defined for the purposes of the old Act, and are used in relation to the old Act have the same meaning as in the old Act.

Item 2 Approved authorities for non-government schools

This item means that each approved authority for non-government school systems and non-systemic schools approved under the *Schools Assistance Act 2008* as at 31 December 2013 is taken to be an approved authority under the *Australian Education Act 2013* on and after 1 January 2014.

Under section 79 of the *Australian Education Act 2013*, an approved authority is approved only for a school that is specified in the approval, a location of the school that is specified in the approval, and a level of education at that location that is specified in the approval.

Consequently, this item also clarifies the things taken to be specified in an approval deemed to have been made under this item, being:

- each approved school for which the authority is taken to be approved;
- each location that, on 31 December 2013, was approved for each such school;
- each level of education that, on 31 December 2013, was approved for each such location.

Item 3 Non-bodies Corporate

Under the *Australian Education Act 2013*, one of the basic requirements for approval of an approved authority is that a non-government body applying for approval is a body corporate. This is consistent with the requirement for approved authorities for non-systemic schools under the *Schools Assistance Act 2008*, but is a new legal requirement for approved authorities for systemic schools. This item suspends the requirement to allow those approved authorities that are not body corporates on 31 December 2013 until 31 December 2014 to make the necessary arrangements to comply with the body corporate requirement.

If an approved authority under the *Schools Assistance Act 2008* becomes an approved authority pursuant to item 2 and becomes a body corporate before 1 January 2015, then that body corporate will be taken to be the new approved authority. This ensures that the incorporation of the approved authority (which may create a new legal entity) does not impact on the approved authority's rights and obligations under the new Act, including its funding under the transitional funding provisions (Division 5 of Part 3 of the new Act).

Item 4 Applications for approved authorities that have not been dealt with by 31 December 2013

If a body has applied for approval as an approved authority under the *Schools Assistance Act 2008*, but a decision on the application has not been made by 31 December 2013, that application is taken to have been made under the *Australian Education Act 2013*, and is dealt with under the provisions of the new Act (including, for example, the ability for the Department to seek further information from the applicant about matters that may need to be addressed under the new Act).

However, despite section 73(6) of the *Australian Education Act 2013* (which allows an approval of an approved authority to come into force earlier than the day the approval is given), approvals in relation to this item may not come into force before 1 January 2014.

Item 5 Approved authorities for government schools

For the purposes of the *Australian Education Act 2013*, the Minister is taken to have approved a State or Territory to be the approved authority for government schools located in the State or Territory.

The approval under this item is deemed to be in force on and after 1 January 2014.

This item also clarifies the things taken to be specified in an approval of an approved authority for government schools that is taken to have been made under this item, being:

- each school for which the authority is taken to be approved;
- each location that, on 31 December 2013, was approved by the State or Territory for each government school;
- each level of education that, on 31 December 2013, was approved by the State or Territory for each location.

Item 6 Block grant authorities

The Minister is taken to have approved those block grant authorities who were approved under the *Schools Assistance Act 2008* as at 31 December 2013 for the purposes of the *Australian Education Act 2013*.

The approval is taken to be in force on or after 1 January 2014.

Section 86 of the *Australian Education Act 2013* provides that an approval of a block grant authority is limited to the schools specified in the approval (including specification by reference to their approved authority). Consequently, a block grant authority approved under item 6 is taken to be approved for those schools in relation to which the body is, on 31 December 2013, a block grant authority under the *Schools Assistance Act 2008*.

Item 7 No notice of decision required

Despite section 119 of the *Australian Education Act 2013* (which requires written notification of a reviewable decision to be given to the relevant person for a reviewable decision), there is no requirement to notify of approvals taken to be in force under Schedule 2.

This item is for clarification only; as the deeming of approvals under Schedule 2 are not actually decisions under the new *Australian Education Act 2013*, as there are no “decisions” being made that would trigger the requirement to provide notice under section 119 of that Act.

However, the Department intends to write to all current approved authorities and block grant authorities before 1 January 2014 to advise them of the effect of the transitional provisions and, in the case of approved authorities, provide provisional advice as to their funding entitlement for which they will be approved from 1 January 2014.

Item 8 Variation or revocation of deemed approvals

This item clarifies that approvals taken to be in force under Schedule 2 can be varied or revoked under the provisions of the *Australian Education Act 2013* as if they had been granted under that Act.

This item is for clarification only. The deemed approvals made by Schedule 2 are, for all legal purposes, approvals under the new *Australian Education Act 2013*, and that Act applies in the ordinary way to those approvals. However, since the approvals under Schedule 2 are automatically granted by operation

of law, their granting to approved authorities and block grant authorities does not imply that the Minister is satisfied those authorities actually satisfy all of the approval criteria in the *Australian Education Act 2013*.

Thus, even though an approved authority under the *Schools Assistance Act 2008* on 31 December 2013 will automatically become an approved authority under the *Australian Education Act 2013* on 1 January 2014 (item 2), that does not prevent the Minister taking action against that approved authority under the new Act from 1 January because he or she considers the authority not to be a “fit and proper person”, for example.

Item 9 Implementation plans and school improvement plans

This item provides timeframes in relation to requirements regarding school improvement plans and implementation plans.

An approved authority for more than one participating school must comply with Part 7 (implementation plans) of the *Australian Education Act 2013* on and from 1 January 2014.

An approved authority for a school must have a school improvement framework and a school improvement plan for the school on and from 1 January 2015.

Item 10 Majority Aboriginal and Torres Strait Islander school

This item relates to the definition of ‘majority Aboriginal and Torres Strait Islander school’ in section 8 of the *Australian Education Act 2013*, which in part is defined by reference to the percentage of Aboriginal or Torres Strait Islander students that are receiving education at the school on the school’s census day for the previous year.

Item 10 provides that, for the purposes of the definition in the principal Act, a school’s census day for 2013 is the census day for the school for 2013 under the *Schools Assistance Act 2008*.

Item 11 SES scores

Determinations of a school’s SES score in force under the *Schools Assistance Act 2008* as at 31 December 2013 are taken to have been made under the *Australian Education Act 2013* and be in force under that Act on and after 1 January 2014.

Determinations deemed to be made in relation to this item are not reviewable.

This item does not prevent the Minister from making a new determination of a school’s SES score under section 52 of the *Australian Education Act 2013*.

This item is intended to operate as a fall-back only. The Department has already calculated the SES scores for 2014 onwards in accordance with

established practice, however for clarity will issue new SES determinations under section 52 of the new Act prior to 1 January 2014. (This can be done prior to the commencement of the new Act under section 4 of the *Acts Interpretation Act 1901*).

Item 12 Regulations

Before 1 January 2015, regulations made under section 130 of the *Australian Education Act 2013* may modify the operation of that Act as is necessary or convenient to deal with transitional arrangements.

Consultation with the Ministerial Council (subsection 130(5) of the *Australian Education Act 2013* refers) is not required in relation to regulations made before 1 January 2014.

Statement of Compatibility with Human Rights

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

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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

The Australian Education (Consequential and Transitional Provisions) Bill will amend the *Federal Financial Relations Act 2009* and the *Schools Assistance Act 2008* to enable Commonwealth recurrent funding and capital funding for schools to be appropriated exclusively under the proposed *Australian Education Act 2013* from 1 January 2014 and to enable regulations to be made to prescribe modifications of the *Australian Education Act 2013* that are necessary or convenient to deal with transitional matters.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms. It contains consequential and transitional provisions to help enable the *Australian Education Act 2013*. A Statement of Compatibility with Human Rights is attached to the Supplementary Explanatory Memorandum for the Australian Education Bill 2012.

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.

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