

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EDUCATION LEGISLATION AMENDMENT BILL 2008

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education)

EDUCATION LEGISLATION AMENDMENT BILL 2008

OUTLINE

The purpose of this Bill is to amend the *Indigenous Education (Targeted Assistance) Act 2000* (the IETA Act) to enable the Commonwealth to continue to exercise public leadership and maintain support for the achievement of improved Indigenous education outcomes, including meeting its responsibilities for the policy framework and priorities, engagement with stakeholders and investment in support of those outcomes.

The Bill provides funding for a range of targeted programs and projects to support improvements in Indigenous education outcomes. It will assist in the development of an evidence base in conjunction with States, Territories and non-government education providers to support future policy reforms and system improvements in the field of Indigenous education.

The Bill provides for the continuation of the “Away from Base” element of ABSTUDY for 2009-2013, which was transferred under the IETA Act in 1999, and for transitional arrangements pending the implementation of reforms to intergovernmental financial arrangements in the Early Childhood Development and Vocational Education and Training Sectors.

The Bill ceases to appropriate funding from 2009 for six Indigenous education program elements for schools, Supplementary Recurrent Assistance (SRA), English as a Second Language – Indigenous Language Speaking Students (ESL-ILSS), Indigenous Tutorial Assistance Scheme (ITAS) (except for ITAS Tertiary), Building and Indigenous Workforce (BAIW), Whole of School Intervention Strategy – Homework Centres (HWC) and Transitional Project Assistance equivalent funding under the National Indigenous English Literacy and Numeracy Strategy for non-government schools (TPA-NIELNS). Funding for these program elements of some \$462.7 million, in final 2008 prices, will transfer to the proposed State Finances Act for government schools and some \$200.7 million, in final 2008 prices, for non-government schools will transfer to the proposed Schools Assistance Act.

Funding for non-government schools transferring to the Schools Assistance Act will be determined under a composite per capita formula to be called Indigenous Supplementary Assistance (ISA). In this way the non-government schools sector will be treated in the same way as the government schools sector through the removal of input controls and streamlining. The Schools Assistance Act will also incorporate an Indigenous Funding Guarantee to ensure that no non-government school system or non-systemic independent school is worse off under the new arrangements.

The Bill makes a number of consequential, transitional and technical amendments to the IETA Act, the *Australian Technical Colleges (Flexibility in Achieving Australia’s Skills Needs) Act 2005* and the *Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act 2004* to reflect the new schools funding arrangements from 2009 and the provisions of the proposed Schools Assistance Act. The Bill also repeals the *States Grants (Primary and Secondary Education Assistance) Act 2000*.

FINANCIAL IMPACT

The Bill provides for the appropriation of some \$640.5 million in final 2008 prices for non-ABSTUDY payments. Additionally, it provides authority for ABSTUDY (Away From Base) payments to be made out of the Consolidated Revenue Fund, which is appropriated accordingly. The projected demand for 2009-2013 for ABSTUDY (Away From Base) payments, in constant final 2008 prices is \$102.1 million. In accordance with the Government's policy, these amounts will be adjusted for price movements.

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NOTES ON CLAUSES

Clause 1 – Short title

Provides for the Act to be cited as the *Education Legislation Amendment Act 2008*.

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 has the effect of providing for sections 1-3, Schedules 1 and 4 and any provision not covered elsewhere in the table, to commence on Royal Assent; and for Schedules 2 and 3 to commence at the same time as the *Schools Assistance Act 2008* commences.

Subclause 2(2) provides that column 3 of the table is for 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 - Indigenous Education

Indigenous Education (Targeted Assistance) Act 2000

Items 1 and 3 Subsection 3(1) and section 4 (definition of *funding year*)

Amend the overview of the Act in subsection 3(1) (dealing with the making of agreements) and the definition of *funding year* in section 4 to reflect the extension of funding under the Act by four years to 2013.

Item 2 Section 4 (paragraph (b) of the definition of *ABSTUDY approved course*)

Amends paragraph (b) of the definition of *ABSTUDY approved course* in section 4 to reflect the repeal of the definition of “higher education institution” by item 4 and the insertion of a new definition of “higher education provider” by item 5.

Item 4 Section 4 (definition of *higher education institution*)

Repeals the definition of *higher education institution* in section 4. The definition relies on a definition in the *Higher Education Funding Act 1988*. That Act may be repealed in the near future.

Item 5 Section 4

Inserts a new definition of *higher education provider* in section 4 of the Act. Provides that the term has the same meaning as in section 16-1 of the *Higher Education Support Act 2003*.

Item 6 After section 14A

Inserts a new section 14B to provide appropriations for non-ABSTUDY payments for the period 1 January 2009 to 30 June 2013.

Proposed subsection 14B(1) inserts a table providing for base funding amounts (starting amounts) for four overlapping eighteen month appropriation periods from 1 January 2009 to 30 June 2013. These appropriations may be increased by indexation in accordance with subsection 14B(2).

Proposed subsection 14B(2) provides that the regulations may provide for an increase in the base starting amount for each appropriation period by reference to changes in a specified index.

Item 7 Section 17A

Replaces section 17A of the Act (dealing with the requirement for the Minister to table annual reports in each House of the Parliament) with a new section to reflect the narrower range of funding to be provided under the Act in the 2009-2013 quadrennium.

Item 8 Application

An application provision that has the effect of providing that the amendment to annual reporting requirements made by item 7 applies only in relation to the 2009 and later funding years.

Schedule 2 - Amendments consequential on the Schools Assistance Act 2008

Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Act 2005

Item 1 Section 3 (definition of *government school*)

Repeals the definition of *government school* in section 3 of the Act and replaces it with a new definition replicating the definition of “government school” in the *Schools Assistance (Learning Together - Achievement Through Choice and Opportunity) Act 2004*.

Items 2 and 3 Section 3 (definitions of *non-government school* and *school*)

Amends the definitions of *non-government school* and *school* to reflect the proposed *Schools Assistance Act 2008*.

Item 4 Section 3 (definition of *Schools Assistance Act*)

Repeals the definition of *Schools Assistance Act* to reflect the amendments made by items 1, 2 and 3.

Items 5 and 6 Subparagraphs 7(2)(a)(i) and (ii)

Amend subparagraphs 7(2)(a)(i) and (ii) to reflect the proposed *Schools Assistance Act 2008*.

Item 7 Transitional provision

A transitional provision designed to avoid having to amend existing agreements under the Act.

Subitem 7(1) has the effect of providing that item 7 applies in relation to an agreement that, immediately before the commencement of item 7:

- was of the type mentioned in subsection 7(2) of the *Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Act 2005* (i.e. an agreement with an ATC authority for the establishment or operation of an ATC as a non-government school); and
- included a condition of the type mentioned in paragraph 7(2)(a) of the Act.

Subitem 7(2) has the effect of providing that such a condition has effect (from the commencement of item 7) as if it were a condition of the type mentioned in that paragraph as amended by this Schedule.

Indigenous Education (Targeted Assistance) Act 2000

Items 8 and 9 Paragraph 11D(1)(b) and subparagraphs 11D(1)(c)(i) and (ii)

Repeal paragraph 11D(1)(b) and amend subparagraphs 11D(1)(c)(i) and (ii) to replace references to the *States Grants (Primary and Secondary Education Assistance) Act 2000*, which is repealed by Schedule 3. New references are to an Education Assistance Act (within the meaning of the *Schools Assistance Act 2008*).

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

Item 10 Subsection 3(2)

Repeals and replaces subsection 3(2) to remove references to the program years 2009, 2010 and 2011 and capital funding amounts for those program years, to reflect the new schools funding arrangements for those years and the provisions of the *Schools Assistance Act 2008*.

Item 11 Section 4 (definition of *program year*)

Repeals and replaces the definition of *program year* in section 4 to remove references to the program years 2009, 2010 and 2011 and capital grants to reflect the new schools funding arrangements for those years and the provisions of the *Schools Assistance Act 2008*.

Item 12 Subsection 138(1)

Amends the annual reporting requirements in subsection 138(1) to remove references to the years 2009, 2010 and 2011 to reflect the new schools funding arrangements for those years and the provisions of the *Schools Assistance Act 2008*.

Item 13 Schedule 3 (table items 5, 6 and 7)

Repeals table items 5, 6 and 7 of Schedule 3 (which provide for Capital grants for government schools for the program years 2009, 2010 and 2011) to reflect the new schools funding arrangements for those years and the provisions of the *Schools Assistance Act 2008*.

Item 14 Schedule 3 (note 1)

Amends note 1 to Schedule 3 as a consequence of the repeal of note 2 by item 15.

Item 15 Schedule 3 (note 2)

Repeals note 2 to Schedule 3 (which refers to capital grant amounts for government schools for the program years 2009, 2010 and 2011) to reflect the new schools funding arrangements for those years and the provisions of the *Schools Assistance Act 2008*.

Item 16 Schedule 5 (table items 5, 6 and 7)

Repeals table items 5, 6 and 7 of Schedule 5 (which provide for Capital grants for non-government schools for the program years 2009, 2010 and 2011) to reflect the new schools funding arrangements for those years and the provisions of the *Schools Assistance Act 2008*.

Item 17 Schedule 5 (note 1)

Amends note 1 to Schedule 5 as a consequence of the repeal of note 2 by item 18.

Item 18 Schedule 5 (note 2)

Repeals note 2 to Schedule 5 (which refers to capital grant amounts for non-government schools for the program years 2009, 2010 and 2011) to reflect the new schools funding arrangements for those years and the provisions of the *Schools Assistance Act 2008*.

Schedule 3 - Repeal of the States Grants (Primary and Secondary Education Assistance) Act 2000

Item 1 The whole of the Act

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

Schedule 4 - Technical amendment

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

Item 1 Subsection 50(1) (note 2)

Rectifies an incorrect cross-reference in note 2 to subsection 50(1) of the Act.